RECORD AND BRIEFS

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Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States

DIVNA MASLENJAK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER LANDAU, P.C.
Counsel of Record
PATRICK HANEY
JEFF NYE
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
(202) 879-5000
clandau@kirkland.com

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QUESTION PRESENTED

Whether the Sixth Circuit erred by holding, in direct conflict with the First, Fourth, Seventh, and Ninth Circuits, that a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement.

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INTRODUCTION

As this Court has long recognized, "American citizenship is a precious right," and thus "naturalization decrees are not lightly to be set aside." *Costello v. United States*, 365 U.S. 265, 269 (1961) (internal quotation omitted). A naturalized citizen is as much a citizen as any other, and indeed naturalized Americans have enriched all areas of our national life, including business, government, law, science, sports, and the arts. The threat of denaturalization has never hung over these citizens, and their families, like a sword of Damocles.

Until now. In this case, the Sixth Circuit held that petitioner, a naturalized American originally from Bosnia, can be stripped of her citizenship in a criminal proceeding based on an *immaterial* false statement in an immigration proceeding. That holding is squarely inconsistent with decisions of the First, Fourth, Seventh, and Ninth Circuits. *See, e.g.*, *United States v. Munyenyezi*, 781 F.3d 532, 536 (1st Cir. 2015); *United States v. Latchin*, 554 F.3d 709, 712-15 (7th Cir. 2009); *United States v. Alferahin*, 433 F.3d 1148, 1154-56 (9th Cir. 2006); *United States v. Aladekoba*, 61 F. App'x 27, 28 (4th Cir. 2003) (*per curiam*). The resulting inconsistency in the application of the Nation's criminal and immigration laws is intolerable: a naturalized American can now be stripped of her citizenship based on an immaterial false statement if prosecuted in Cleveland, but not in Boston, Richmond, Chicago, or San Francisco. And, adding to the confusion, the United States itself has flip-flopped on this issue not only in different cases, but also at different stages of *this very case*.

In addition, the decision below is wrong. According to the Sixth Circuit, Congress could and would have included an express materiality requirement in the criminal naturalization fraud provision, 18 U.S.C. § 1425(a), if it had wanted one. But that provision applies only where an applicant "knowingly procures" naturalization "contrary to law," *id.*, and, as a matter of law and logic, an applicant cannot knowingly "procure" American citizenship illegally based on an immaterial false statement. In addition, the "contrary to law" requirement depends on an underlying predicate violation of law, and a predicate crime alleged here, 18 U.S.C. § 1015(a)—which proscribes false statements under oath relating to naturalization—also requires a material false statement.

The district court, however, instructed the jury that it could convict petitioner under § 1425(a), based on a predicate violation of § 1015(a), "[e]ven if you find that a false statement *did not influence* the decision to approve the defendant's naturalization." App. 86a (emphasis added); *see also id.* ("A false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case.") (emphasis added). That approach turns the statutory scheme upside down: it is fanciful to think that Congress intended for naturalized Americans to lose their citizenship in *criminal* proceedings based solely on an immaterial false statement, especially because (as this Court has recognized) they cannot lose their citizenship in *civil* proceedings based solely on such a statement. *See Kungys v. United States*, 485 U.S. 759, 767 (1988).

And the decision below has sweeping implications for naturalized Americans. Over the past decade alone, more than 6.6 million persons have become naturalized citizens. Every one of these persons, as well as the millions of additional citizens naturalized over previous decades, is now subject to a possible loss of citizenship—and potential deportation—based on an *immaterial* false statement.

Because the Sixth Circuit erred, and created an acknowledged circuit conflict, by holding that a naturalized American can be stripped of her citizenship based solely on an immaterial false statement in an immigration proceeding, this Court should grant review.

OPINIONS BELOW

The Sixth Circuit's opinion is reported at 821 F.3d 675, and is reprinted in the Appendix ("App.") at 1-39a. The district court's colloquy with counsel on the jury instructions is unreported, and relevant excerpts are set forth at App. 75-82a. The district court's jury instructions are unreported, and relevant excerpts are set forth at App. 83-89a. The district court's unreported denaturalization order is set forth at App. 95-96a.

JURISDICTION

The Sixth Circuit entered judgment on April 7, 2016, App. 1a, and denied a timely petition for rehearing *en banc* on May 27, 2016, App. 40a. On August 3, 2016, Justice Kagan extended the time within which to file a petition for a writ of certiorari until and including September 26, 2016. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT STATUTORY PROVISIONS

8 U.S.C. § 1451(a) provides in relevant part:

It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation ....

8 U.S.C. § 1451(e) provides in relevant part:

> When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled.

18 U.S.C. § 1425 provides in relevant part:

> Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person ... Shall be fined under this title or imprisoned not more than [10 to 25 years], ... or both.

18 U.S.C. § 1015 provides in relevant part:

> Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens ... Shall be fined under this title or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

A. Factual Background

Petitioner Divna Maslenjak, an ethnic Serb, was born and raised in a predominantly Serb village in modern-day Bosnia. App. 3a. After the collapse of the former Yugoslavia in the early 1990s, clashes broke out between Bosnia's majority Muslim population and its minority Serbs, and members of each group reported persecution by the other. *Id.*

In April 1998, Maslenjak, along with her husband and their two children, met in Belgrade, Yugoslavia (now Serbia), with an American immigration official designated to assist refugees from Bosnia's ethnic strife. *Id.* As that official testified below, the refugees she interviewed in that position "were pretty much always ethnic Serbs that had been living in Bosnia and they were ... basically forced out of Bosnia, from ... their place they lived because of ethnic cleansing." App. 51a.

And that was true for Maslenjak: as the immigration official testified below, the basis for Maslenjak's claim of refugee status for her family was that "because they were ethnic Serbs, they had been forced to flee their home—the place they lived

in Bosnia, and that they were not able to go back because they feared, basically, for their life, which was plausible." App. 56a; *see also* App. 58a (Maslenjak's refugee application based on "fear that [her family] would be mistreated on account of their ethnicity if they returned back to their home"); App. 64a (Trial Exhibit 26) (stating that Maslenjak and her family "are registered refugees in [Yugoslavia]," who "see no prospects for local integration on account of their refugee status," and "fear maltreatment on account of their ethnicity if they return to their home village"). In addition, the immigration official testified that Maslenjak stated that, after a temporary stay in Yugoslavia, she and her children "had gone back to Bosnia, but a different part that was Serb held; but the husband did not return, because he was afraid that he would be forced to serve in the [Bosnian Serb] military if he went back to that part of Bosnia." App. 56-57a.

Maslenjak and her family were granted refugee status in 1999 and immigrated to the United States in 2000. App. 4a. They settled near Akron, Ohio, where two of Maslenjak's sisters, who were also refugees, were living.

In December 2006, Maslenjak applied for naturalization. App. 65-74a. As part of the application process, she was asked numerous questions, including whether she had "ever given false or misleading information to any U.S. government official while applying for any immigration benefit." App. 72a (Question 23). A separate question asked whether she had ever "lied to any U.S. government official to gain entry or admission into the United States." *Id.* (Question 24).

Maslenjak answered both questions in the negative. *See id.* She obtained United States citizenship on August 3, 2007. App. 5a.

Shortly before Maslenjak applied for citizenship, her husband was arrested on charges of making a false statement on government documentation. App. 4-5a. Specifically, the Government charged him with failing to report on his immigration application that he had served in the the Bosnian Serb military during the Bosnian civil war. *Id.* He was convicted in 2007 and, because his conviction subjected him to removal, taken into custody by U.S. Immigration and Customs Enforcement. App. 5a.

In an effort to avoid her husband's removal, Maslenjak testified at her husband's asylum hearing in April 2009. *Id.* In that testimony, Maslenjak admitted that her husband had served in the Bosnian Serb military during the Bosnian civil war, that the family had lived together in Bosnia (although not in their home village) from 1992 to 1997, and that she had misrepresented these facts during her 1998 interview for refugee status. *Id.*

B. Proceedings Below

In March 2013, a grand jury indicted Maslenjak for violating 18 U.S.C. § 1425(a), which makes it a crime to "knowingly procure[]" naturalization "contrary to law." *See* App. 41-42a. As relevant here, the indictment charged Maslenjak with making "material false statements" in response to Questions 23 and 24 of her 2006 naturalization application, on the theory that she "then well knew that she had lied to government officials when applying for her refugee status" in 1998. App. 42a.

A major issue at trial was the impact, if any, of Maslenjak's 1998 statements about her husband's military service on her application for refugee status. The Government tried to show that Maslenjak, who acted as the Primary Applicant ("PA") for her family, had been granted refugee status based on those statements. *See, e.g.*, App. 44-45a. Maslenjak, in contrast, tried to show that she had been granted refugee status based on fear of ethnic persecution. *See, e.g.*, App. 64a.

Although the indictment charged Maslenjak with making "material false statements," App. 41a, and the Government "adduced proof at trial relevant to the materiality element," App. 26a, the Government took the position at trial that proof of a material false statement was not necessary for a conviction under either § 1425(a) or 18 U.S.C. § 1015(a), which proscribes "mak[ing] any false statement under oath" in a naturalization proceeding and served as a predicate offense for the § 1425(a) charge in this case, App. 81-82a. Over Maslenjak's objection, *see* App. 75-82a, the district court (Pearson, J.) sided with the Government, and instructed the jury:

> Count 1 of the indictment charges the defendant with violating Section 1425(a) of Title 18 of the United States Code.
>
> * * *
>
> In order to prove defendant guilty of naturalization fraud, the government must prove each of the following elements beyond a reasonable doubt.
>
> * * *

> First, that defendant procured naturalization;
>
> Second, defendant procured her naturalization contrary to law; and
>
> Third, defendant acted knowingly.
>
> Element Number 1: Procured Naturalization. The government must prove beyond a reasonable doubt that defendant procured naturalization. To establish this element, the government must prove that defendant obtained United States citizenship.
>
> * * *
>
> Element Number 2: Contrary to Law. In order to prove that defendant acted "contrary to law," the government must prove that defendant acted in violation of at least one law governing naturalization.
>
> * * *
>
> Element Number 3: Knowingly. To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

App. 84-86a.

With respect to Element Number 2 ("contrary to law"), the court explained that a predicate offense was 18 U.S.C. § 1015(a), which "prohibits an applicant from knowingly making any false statement under oath, relating to naturalization." App. 85a. And the court specifically instructed the jury that, in order to convict, it did not have to find that any such false statement was material:

> A false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case. Even if you find that a false statement *did not influence* the decision to approve the defendant's naturalization, the government need *only* prove that one of the defendant's statements was false.

App. 86a (emphasis added).

During deliberations, the jury sent the court the following note:

> At start of trial jury was told that Divna applied for refugee status due to a fear of persecution due to her husband not serving in the military during the war.
>
> On Exhibit #26 it states that Divna was applying for refugee status due to fear of persecution due to her ethnicity.
>
> What was her refugee status granted on?
>
> Fear of not serving?
>
> Or fear of ethnic backlash[?]

App. 90a. The court responded by telling the jury:

> You must make your decision based only on the evidence you saw and heard here in court. ... You may also rely on your collective memories. ... You have now what you need to decide the case.

App. 89a.

The jury returned a guilty verdict both on Count 1 (violation of § 1425(a), which results in automatic

loss of citizenship), App. 91-92a, and Count 2 (violation of 18 U.S.C. § 1423, which does not result in loss of citizenship), App. 93-94a.[1] Shortly thereafter, the district court entered an order revoking Maslenjak's citizenship under 8 U.S.C. § 1451(e) as a mandatory and automatic consequence of her conviction under § 1425(a). App. 95-96a; *see generally Latchin*, 554 F.3d at 715-16; *United States v. Inocencio*, 328 F.3d 1207, 1210 (9th Cir. 2003); *United States v. Moses*, 94 F.3d 182, 187-88 (5th Cir. 1996); *United States v. Maduno*, 40 F.3d 1212, 1217-18 (11th Cir. 1994); *cf. Fedorenko v. United States*, 449 U.S. 490, 517 (1981) (in civil context, "district courts lack equitable discretion to refrain from entering a judgment of denaturalization against a naturalized citizen whose citizenship was procured illegally or by willful misrepresentation of material facts.").

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[1] Count 2 charged Maslenjak with a violation of 18 U.S.C. § 1423, which provides that "[w]hoever knowingly uses for any purpose any ... certificate of naturalization ... unlawfully issued or made ... showing any person to be naturalized or admitted to be a citizen, shall be fined under this title or imprisoned not more than five years, or both." App. 42a. Because that Count applies only insofar as a certificate of naturalization was "unlawfully issued," it is derivative of Count 1, which involves the validity of the underlying certificate. Indeed, with the parties' agreement, the district court instructed the jury that it could convict Maslenjak on Count 2 only if it found her guilty on Count 1. *See* App. 93a ("Complete this page *only* if your verdict on Verdict Form - Count 1 is guilty.") (emphasis added). Thus, if this Court were to reverse the judgment as to Count 1, it follows that Count 2 would necessarily fail as well.

Maslenjak appealed her conviction and the revocation of her citizenship, but the Sixth Circuit affirmed. App. 1-39a. As relevant here, the court held, "[b]ased on the plain language of the statute as well as the overall statutory scheme for denaturalization," that "proof of a material false statement is not required to sustain a conviction under 18 U.S.C. § 1425(a)," App. 7a, or a predicate crime at issue here, 18 U.S.C. § 1015(a), App. 18-19a.

With respect to the statutory text, the court noted that "the term 'material' is found nowhere in § 1425(a)." App. 8a. "Without statutory support for an element of materiality," the court declared, "we are hard-pressed to conclude that materiality is an element of the offense under 18 U.S.C. § 1425(a)." *Id.* Similarly, "[a] material false statement is not an element of the crime under § 1015(a)." App. 21a; *see also* App. 18-19a.

And with respect to the statutory structure, the court stated that the federal immigration laws create "what are essentially two alternative paths for denaturalization," one civil and one criminal. App. 10a. The civil path includes an express materiality requirement. *Id.* (citing 8 U.S.C. § 1451(a) and *Kungys*, 485 U.S. at 772-73). The criminal path does not. App. 12-13a. Rather than construing these two paths in tandem, the Sixth Circuit concluded that "the explicit requirement of materiality under one approach but not the other is actually consistent with a two-track statutory scheme for denaturalization":

> In a civil denaturalization suit, the government can bring its case simply by filing an equitable petition, proceed as in a

> civil case, and satisfy a lesser burden of proof than beyond a reasonable doubt. In light of the slightly lower burden of proof, Congress has required the government to prove that the naturalized citizen has concealed a material fact. By contrast, in a criminal case resulting in denaturalization, the government must prove the charge under 18 U.S.C. § 1425 beyond a reasonable doubt while meeting the demands of constitutional due process. Congress has not required proof of materiality in that scenario arguably because of the higher burden of proof, the additional safeguards for the naturalized citizen's constitutional rights, and the broad sweep of § 1425 itself.

App. 29a.

In so holding, the Sixth Circuit recognized that Maslenjak's position "finds support in a number of other circuit decisions holding that materiality is an implied element of 18 U.S.C. § 1425(a)," but "[b]y and large" deemed these decisions "unpersuasive." App. 22-23a (citing *Munyenyezi*, 781 F.3d at 536; *United States v. Mensah*, 737 F.3d 789, 808-09 (1st Cir. 2013); *Latchin*, 554 F.3d at 712, 713 n.3; *Aladekoba*, 61 F. App'x at 28; *United States v. Agyemang*, No. 99-4496, 230 F.3d 1354, 2000 WL 1335286, at *1 (4th Cir. Sept. 15, 2000); *United States v. Agunbiade*, No. 98-4581, 172 F.3d 864, 1999 WL 26937, at *2 (4th Cir. Jan. 25, 1999) (*per curiam*); *United States v. Puerta*, 982 F.2d 1297, 1301 (9th Cir. 1992)).

In particular, the Sixth Circuit rejected the analysis applied by the Ninth Circuit in *Puerta*, and

followed in other circuits, that the Government is required to establish materiality in a criminal denaturalization proceeding because (1) the Government is required to establish materiality in a civil denaturalization proceeding, and the elements of the two types of proceedings should be construed in tandem, and (2) Congress would not have intended to impose the grave consequence of mandatory denaturalization in either proceeding based on an immaterial false statement. App. 22-25a. The court also noted that in some, but not all, of the other cases, the Government had conceded that it was required to prove a material false statement, or that such a statement was an element of the underlying predicate offense. App. 22-23a & n.8.

Judge Gibbons concurred "with some reluctance," and characterized the court's result as "troublesome." App. 39a (concurring opinion). As she explained, "[i]nitially, I was not inclined to differ from our sister circuits' interpretation of 18 U.S.C. § 1425(a)," but ultimately was "persuaded ... that the view most faithful to the statute is that materiality is not an element" of that provision. *Id.* She emphasized, however, that "I am uncertain what goal Congress intended to further by omitting materiality" from the requirements for criminal denaturalization, and noted that she had "located no other federal criminal statute that punishes a defendant for an immaterial false statement." *Id.* Nor, for that matter, had she "located any analogous context in which the elements of a crime are less onerous than the elements of the related civil penalty proceeding." *Id.* Indeed, "the government, in response to questioning at oral argument, was unable to articulate any interest of

the United States in prosecuting statements that are immaterial." *Id.*

The Sixth Circuit denied a timely petition for rehearing *en banc*. App. 40a. This petition follows.

REASON FOR GRANTING THE WRIT

The Sixth Circuit Erred By Holding, In Direct Conflict With The First, Fourth, Seventh, And Ninth Circuits, That A Naturalized American Citizen Can Be Stripped Of Her Citizenship In A Criminal Proceeding Based On An Immaterial False Statement.

The decision below creates a direct, and acknowledged, circuit conflict on the question whether a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement. The Sixth Circuit answered that question in the affirmative. *See* App. 7-30a. In sharp contrast, four other circuits—the First, Fourth, Seventh, and Ninth—have answered it in the negative. *See Munyenyezi*, 781 F.3d at 536 ("[F]or a section 1425(a) crime: the naturalized citizen must have misrepresented or concealed some fact" and "the fact must have been material.") (internal quotation omitted); *Latchin*, 554 F.3d at 715 ("[A] conviction under § 1425(a) requires proof of both materiality and procurement."); *Alferahin*, 433 F.3d at 1156 ("[Section] 1425(a) contains a requirement of materiality."); *Aladekoba*, 61 F. App'x at 28 (under § 1425(a), "statements must be material in order to be contrary to law"); *Agunbiade*, 172 F.3d 864, 1999 WL 26937, at *2 ("To convict [the defendant], the Government must establish that ... the statements were material.") (citing 18 U.S.C. § 1425(a) and *Puerta*, 982 F.2d at

1301); *Puerta*, 982 F.2d at 1302 ("We conclude that [Congress] has not made immaterial false testimony in naturalization proceedings a crime."); *cf. United States v. Nguyen*, __ F.3d __, 2016 WL 3878217 (8th Cir. July 18, 2016) (noting circuit conflict but declining to take sides because the jury in that case had been instructed that the false statement must be material). This direct and acknowledged circuit conflict on an important and recurring question of federal law warrants this Court's review.

The Sixth Circuit dismissed the contrary line of cases as "unpersuasive." App. 9a, 22a. According to the Sixth Circuit, the jury instructions in this case were "an accurate statement of law because proof of materiality is not required to establish a violation of 18 U.S.C. § 1425(a) or the underlying violation of 18 U.S.C. § 1015(a)." App. 18a. That is so, first and foremost, because neither of those provisions by its terms imposes a materiality requirement. "Without statutory support for an element of materiality, we are hard-pressed to conclude that materiality is an element of [an] offense." App. 8a.

But that is an overly simplistic approach to statutory interpretation. Although Congress sometimes includes an express materiality requirement in a statute, the absence of such a provision is hardly dispositive. Here, § 1425(a) requires materiality through the word "procure." Not any predicate violation of law will establish a violation of that provision; rather, only a predicate violation for the purpose of "procur[ing]" citizenship will suffice. That is what distinguishes the § 1425(a) offense from an underlying predicate offense, and justifies the additional penalties—including

automatic denaturalization—imposed by that provision. Here, the district court essentially read the procurement element out of the statute by instructing the jury that it could convict petitioner under § 1425(a), based on a predicate violation of § 1015(a), "[e]ven if you find that a false statement *did not influence* the decision to approve the defendant's naturalization." App. 86a (emphasis added); *see also id.* ("A false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case.") (emphasis added). As a matter of law, an immaterial false statement that "did not influence" the naturalization decision could not possibly have "procured" that decision.

The Sixth Circuit, however, criticized the courts—starting with the Ninth Circuit in *Puerta*—that have "read an implied materiality requirement into § 1425(a)." App. 22a. As the Sixth Circuit explained, "[t]he *Puerta* court based its holding on two factors: (1) proof of materiality was required in a civil denaturalization proceeding under 8 U.S.C. § 1451(a); and (2) the 'gravity of the consequences' of mandatory denaturalization justified a showing of materiality under 18 U.S.C. § 1425(a)." App. 22a (quoting *Puerta*, 982 F.2d at 1301). The Sixth Circuit discounted both of those grounds.

As to the relevance of the materiality requirement in *civil* denaturalization proceedings, *see, e.g.*, *Kungys*, 485 U.S. at 767, the Sixth Circuit declared that all of the other circuits had gotten matters backwards. Whereas those courts held that it would be anomalous for Congress to require the Government to establish materiality in civil but not

criminal proceedings, the Sixth Circuit said just the opposite was true. *See* App. 27-30a. In the Sixth Circuit's view, it makes sense for Congress to impose greater *substantive* requirements in civil denaturalization proceedings, where lesser *procedural* protections are required. App. 29a; *see also* App. 10a (criticizing the other circuits' reliance on *Kungys* because they "overlook the fact that Congress has created a two-track system for denaturalization").

The Sixth Circuit's approach is, to say the least, counter-intuitive. It is certainly true that, in our legal system, greater procedural protections are generally required for criminal as opposed to civil proceedings. *See, e.g.*, U.S. Const. amends. V, VI. But that is because criminal proceedings generally have a more direct adverse impact on a person's life, liberty, or property. *See, e.g., In re Winship*, 397 U.S. 358, 363-64 (1970). That is as true in the immigration context as any other. Here, conviction under § 1425 can result in fines and imprisonment of up to 25 years, *see* 18 U.S.C. § 1425, as well as automatic denaturalization, *see* 8 U.S.C. § 1451(e). There is certainly no reason to suppose that Congress would have wanted this criminal denaturalization provision to sweep more broadly than its civil analogue, 8 U.S.C. § 1451(a). To the contrary, Congress hardly would have allowed the Government to (1) fine, (2) imprison, *and* (3) denaturalize an American citizen based on an immaterial false statement, while simultaneously preventing the Government from denaturalizing her in a civil proceeding based solely on the same statement. As Judge Gibbons noted in her concurrence, "the government, in response to

questioning at oral argument, was unable to articulate any interest of the United States in prosecuting statements that are immaterial." App. 39a. That is certainly a reason to construe the statute not to criminalize such statements in the first place.

And as to the "gravity of the consequences" of denaturalization, *Puerta*, 982 F.2d at 1301, the Sixth Circuit acknowledged the force of the argument against "mandatory denaturalization on anything less than proof of a materially false statement," App. 27a. Nonetheless, the court concluded that, "[w]hatever appeal this rationale might have, the argument invites us to overlook the plain text of 18 U.S.C. § 1425(a) and disregard the overall statutory scheme Congress has enacted for denaturalization ...." App. 27a. As noted above, however, the "plain text" of the statute hardly compels the Sixth Circuit's result, and the "overall statutory scheme" supports, not undermines, a materiality requirement in the criminal as well as the civil context.

The Sixth Circuit forthrightly acknowledged that it was creating a circuit conflict regarding the existence of a materiality requirement in § 1425(a), and dismissed the contrary authority as "unpersuasive." *See* App. 9a, 22a. To be sure, the court also observed that "[n]otably, the parties in *Puerta* agreed that the materiality requirement in the civil denaturalization proceeding implied materiality as an element of 18 U.S.C. § 1425(a) as well." App. 22-23a; *see also Puerta*, 982 F.2d at 1301 ("[T]he government agrees with Puerta that § 1425(a) implies a materiality requirement similar to the one used in the denaturalization context.").

But the Ninth Circuit in *Puerta* did not rest its holding on the Government's concession; to the contrary, relying on *Kungys*, it affirmatively held that the materiality requirement is the same in the civil and criminal contexts. *See id.*; *see also id.* at 1304 ("Under *Kungys*, Puerta's false statements were not material, and therefore may not form the basis of a criminal conviction under § 1425.").

And even if there were any doubt on this score, the Ninth Circuit subsequently dispelled it in *Alferahin*. There, the Government challenged the materiality requirement in the criminal context, and invited the Ninth Circuit to overrule *Puerta*. *See* 433 F.3d at 1155 ("The government argues that *Puerta* was decided incorrectly and that § 1425(a) contains no materiality requirement."). The Ninth Circuit declined the invitation, and held that it was not only error but plain error for the district court in that case to have failed to instruct the jury that a false statement must be material for a conviction under § 1425(a). *See id.* at 1156-57. As the Ninth Circuit explained, *Puerta* was based not on the Government's concession on materiality in that case, but "on 'the standards governing materiality in the [civil] denaturalization context,' and our explicit recognition of potentially incongruous materiality requirements in the criminal context." *Id.* at 1157 (quoting *Puerta*, 982 F.2d at 1300-01).

Similarly, the Sixth Circuit erred by asserting that the Seventh Circuit had "adopted the materiality element, at least in part, because, just as in *Puerta*, the parties to the case agreed that it was an element of 18 U.S.C. § 1425(a)." App. 23a (citing *Latchin*, 554 F.3d at 712, 713 n.3). While it is true that the

Government in *Latchin* conceded the materiality point, the Seventh Circuit (like the Ninth Circuit in *Puerta*) did not rest its decision on that concession. To the contrary, the court expressly "agree[d]" with the parties that the distinction between denaturalization in the civil and criminal contexts is "trivial," and that "the civil and criminal statutes both require a material misrepresentation and procurement of citizenship." 554 F.3d at 713 n.3; *see also id.* at 715 ("We have explained that a conviction under § 1425(a) requires proof of both materiality and procurement, as defined by *Kungys*. We are not alone in this view.") (citing *Alferahin*, 433 F.3d at 1155).

Indeed, if anything, the fact that the Government has conceded the materiality requirement of § 1425(a) in some cases, but not others, only underscores the prevailing confusion that warrants this Court's review. If the Government cannot maintain a consistent position on the meaning of that provision, it is no surprise that the courts cannot either. Indeed, the Sixth Circuit noted that the Government not only "has taken a contrary position on the materiality issue in different cases before different courts, including this one," but "has taken inconsistent positions on the materiality issue at key points in the case now before us." App. 25-26a. Judge Gibbons, concurring, was even more blunt: "The government's inconsistency in this case and on this issue is puzzling and indeed inappropriate." App. 39a. *Compare, e.g.*, App. 81-82a (Government contests materiality requirement); *Alferahin*, 433 F.3d at 1156 (same); *United States v. Biheiri*, 293 F. Supp. 2d 656, 657 (E.D. Va. 2003) (same) *with United States v. Shordja*, 598 F. App'x

351, 354 (6th Cir. 2015) (Government concedes materiality requirement); *Latchin*, 554 F.3d at 712 (same); *Puerta*, 982 F.2d at 1301 (same).

Above and beyond the materiality requirement of § 1425(a), moreover, the conviction here cannot stand because § 1015(a)—a predicate offense for the § 1425(a) violation in this case—also requires a material false statement. Such a requirement, as this Court has explained, is not always explicit in statutory text; rather, it may flow from background common-law rules and assumptions about legislative intent. *See, e.g.*, *Neder v. United States*, 527 U.S. 1, 21-22 (1999). Indeed, this Court has long held that the civil denaturalization provision, which by its terms applies to "[1] concealment of a material fact or ... [2] willful misrepresentation," requires a willful misrepresentation of a material fact. *See, e.g.*, *Kungys*, 485 U.S. at 767, 769; *Fedorenko*, 449 U.S. at 507-08 n.28; *Costello*, 365 U.S. at 271-72 n.3. Because the district court here instructed the jury that it could convict Maslenjak under § 1425(a) based on a violation of § 1015(a) without a material false statement, *see* App. 86a, the judgment must be reversed if *either* provision imposes a materiality requirement.

Finally, this Court's review is warranted in light of the signal importance of this issue. Over the past decade alone, more than 6.6 million persons have been naturalized as American citizens. *See* U.S. Citizenship & Immigration Services, *Naturalization Fact Sheet*, *available at* http://tinyurl.com/zwdeske. Until the Sixth Circuit's decision in this case, every circuit to have addressed the issue had concluded that, in the criminal as well as the civil context, a

naturalized American could not be stripped of her citizenship based solely on an immaterial false statement. The Sixth Circuit's decision now leaves these millions of naturalized Americans vulnerable to fines, imprisonment, and loss of citizenship based on immaterial false statements that did not procure their naturalization. The decision thus makes a mockery of this Court's repeated admonition that American citizenship "once conferred should not be taken away without the clearest sort of justification and proof." *Schneiderman v. United States*, 320 U.S. 118, 122 (1943); *see also Costello*, 365 U.S. at 269 ("The Government carries a heavy burden of proof in a proceeding to divest a naturalized citizen of his citizenship."); *Kungys*, 485 U.S. at 783-84 (Brennan, J., concurring) ("[A]s we have repeatedly emphasized, citizenship is a most precious right and as such should never be forfeited on the basis of mere speculation or suspicion.") (internal citation omitted).

And this case provides an ideal vehicle for this Court to clarify the law in this area. Over Maslenjak's objection, *see* App. 75-82a, the district court instructed the jury that it could convict "even if you find that a false statement did not influence the decision to approve the defendant's naturalization," App. 86a. There was ample evidence for the jury to conclude that Maslenjak's statement about her husband's military service was not material to her application for refugee status. Indeed, the jury obviously struggled with the relevance of that statement, as indicated by the note requesting clarification on this score. *See* App. 90a. If the Government must prove materiality to establish a violation of either § 1425(a) or § 1015(a), then

Maslenjak is entitled at a minimum to a new trial before a properly instructed jury.

The inequitable and arbitrary consequences of the decision below are only magnified by the resulting inconsistency in the law. As a result of the Sixth Circuit's decision, juries in that circuit (like the jury in this case) will be instructed that a false statement need not be material to secure a conviction under § 1425(a), *see* App. 86a, whereas juries in the other circuits will be instructed that a false statement must be material to secure a conviction under that provision, *see, e.g.*, *Munyenyezi*, 781 F.3d at 536; *Latchin*, 554 F.3d at 712-15; *Alferahin*, 433 F.3d at 1154-56; *Aladekoba*, 61 F. App'x at 28. The same person should not be placed in jeopardy of losing her citizenship based on an immaterial false statement if prosecuted in Cleveland, but not in Boston, Richmond, Chicago, or San Francisco. Rather, the elements of a federal crime—especially one that carries the draconian consequence of denaturalization—should be uniform across the Nation.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for writ of certiorari.

September 8, 2016

Respectfully submitted,

CHRISTOPHER LANDAU, P.C.
Counsel of Record
PATRICK HANEY
JEFF NYE
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
(202) 879-5000
clandau@kirkland.com

APPENDIX

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No. 14-3864

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DIVNA MASLENJAK,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Ohio at Cleveland.

No. 1:13-cr-00126—Benita Y. Pearson, District Judge.

Argued: October 8, 2015

Decided and Filed: April 7, 2016

Before: GIBBONS and McKEAGUE Circuit Judges; ANDERSON, District Judge.*

COUNSEL

ARGUED: Patrick Haney, KIRKLAND & ELLIS, LLP, Washington, D.C., for Appellant. Daniel R. Ranke,

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* The Honorable S. Thomas Anderson, United States District Judge for the Western District of Tennessee, sitting by designation.

UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee. **ON BRIEF:** Gregory L. Skidmore, Jeff D. Nye, KIRKLAND & ELLIS, LLP, Washington, D.C., for Appellant. Daniel R. Ranke, UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee.

ANDERSON, D.J., delivered the opinion of the court in which GIBBONS and McKEAGUE, JJ., joined. GIBBONS, J. (pg. 27), delivered a separate concurring opinion.

OPINION

S. THOMAS ANDERSON, District Judge. Divna Maslenjak appeals her conviction for knowingly procuring her naturalization contrary to law in violation of 18 U.S.C. § 1425(a). Maslenjak, an ethnic Serb and native of Bosnia, came to the United States in 2000 as a refugee fleeing the civil war in the former Yugoslavia. Maslenjak claimed she and her family feared persecution in Bosnia because her husband had evaded conscription into the Serbian army during the war. In fact, Maslenjak's husband had not only been in the Serbian militia during the war but had served as an officer in a unit implicated in war crimes. Maslenjak was granted refugee status and ultimately obtained her naturalization. Based on her misrepresentations during the immigration process, a jury found Maslenjak guilty of knowingly procuring her naturalization contrary to law in violation of 18 U.S.C. § 1425(a) and of knowingly using an unlawfully issued certificate of naturalization in violation of 18 U.S.C. § 1423.

On appeal, Maslenjak argues that the district court improperly instructed the jury that her false statements need not be material in order to convict Maslenjak of procuring her naturalization contrary to law. In the alternative, Maslenjak argues that the the district court erroneously instructed the jury that it could also convict Maslenjak if the jury found that she lacked good moral character. We reject both arguments and **AFFIRM** the judgment of the district court.

I.

Maslenjak is a native of what is today the nation of Bosnia. Although Maslenjak was born in a predominantly-Serbian village, Muslims made up the majority of the population in the surrounding region and clashed with ethnic Serbs like Maslenjak and her family. Maslenjak briefly moved with her family from her home village in Bosnia to the Serbian city of Belgrade in 1992 and then returned to Bosnia soon thereafter. As the break-up of the former Yugoslavia accelerated in the 1990s and conditions in Bosnia deteriorated, the United States dispatched immigration officials to Belgrade to assist refugees fleeing Bosnia and the ethnic cleansing taking place there during the war. In April 1998, Maslenjak and her family met with Monia Rahmeyer, an officer with the United States Immigration and Naturalization Service in Belgrade, to seek refugee status based on their fear of persecution in their home region of Bosnia. The interview was conducted with a translator.

No writing or recording of the interview exists to show what questions Rahmeyer asked Maslenjak or what responses Maslenjak provided to the questions. The proof at trial showed that Maslenjak acted as the

primary applicant on her family's asylum application. Maslenjak stated under oath during the interview that her family feared persecution back in Bosnia owing to the fact that her husband did not serve in the military during the war. Maslenjak explained that when she returned to Bosnia with her children in 1992, her husband remained in Jagodina, Serbia, to avoid conscription into the Bosnian Serb army during the Bosnian civil war. According to Maslenjak, she and her husband had lived apart from 1992 to 1997. Based on these representations, Maslenjak and her family were granted refugee status in 1999 and immigrated to the United States in September 2000 where they settled in Ohio. Maslenjak subsequently obtained lawful permanent resident status in 2004.

On December 5, 2006, special agents of Immigration and Customs Enforcement questioned Maslenjak's husband, Ratko Maslenjak, at the family home as part of an investigation into whether Mr. Maslenjak had failed to disclose his military service in Serbia in his immigration application. Divna Maslenjak was present in the home during the interview. Ratko Maslenjask was subsequently charged with two counts of making a false statement on a government document in violation of 18 U.S.C. § 1546(a). Specifically, Ratko Maslenjak was accused of failing to report his military service in the Bratunac Brigade of the Army of the Republic Srpska (also known as the VRS), a unit that participated in the genocide of 7,000 to 8,000 Bosnian Muslims in 1995. The government alleged that according to military records, Ratko Maslenjak served as an officer in the Bratunac Bridgade at the time of the genocide, though there was no evidence Mr. Maslenjak had personally

participated in war crimes. Ratko Maslenjak was arrested on the charges on December 13, 2006.

One week after her husband's arrest, Maslenjak filed an N-400 Application for Naturalization on December 20, 2006. One of the questions on the application asked whether she had ever "knowingly given false or misleading information to any U.S. government official while applying for any immigration benefit or to avoid deportation, exclusion, or removal." A separate question asked whether Maslenjak had ever "lied to any U.S. government official to gain entry or admission into the United States." Maslenjak answered "no" to both questions on her written application. Maslenjak was also interviewed under oath about the written answers on her application and declined to make any changes to the answers when given the opportunity to do so. On August 3, 2007, Maslenjak was naturalized as a citizen of the United States.

On October 7, 2007, Ratko Maslenjak was found guilty in the United States District Court for the Northern District of Ohio on both counts of making false statements on a government document under 18 U.S.C. § 1546(a). The district court sentenced Mr. Maslenjak to 24 months probation on January 8, 2008. Because his criminal conviction made him subject to removal, Ratko Maslenjak was taken into ICE custody on January 13, 2009. In order to avoid removal, Ratko Maslenjak filed a petition for asylum. Divna Maslenjak filed an I-130 Petition for Alien Relative and testified on her husband's behalf at his April 28, 2009, asylum hearing. During her testimony Maslenjak admitted that her husband had served in the Republic Srpska military, that they had in fact lived together in

Bosnia after 1992, and that she had lied to the immigration officer about these facts during the refugee application interview in 1998.

On March 5, 2013, a federal grand jury indicted Maslenjak with one count of knowingly procuring her naturalization contrary to law in violation of 18 U.S.C. § 1425(a). The indictment alleged that Maslenjak "made material false statements" on her Form N-400 Application for Naturalization by answering "no" to the questions about "knowingly giv[ing] false or misleading information to any U.S. government official while applying for any immigration benefit" and "[lying] to any U.S. government official to gain entry or admission into the United States" and then giving the same false answers during her interview for naturalization. The second count of the indictment charged Maslenjak with knowingly misusing her unlawfully issued certificate of naturalization to file a Form I-130 Petition for Alien Relative on February 6, 2009, to obtain lawful permanent resident status for her husband, in violation of 18 U.S.C. § 1423. On April 17, 2014, a jury found Maslenjak guilty of both charges. Upon her conviction, the district court sentenced Maslenjak to two years' probation and granted the government's motion to have Maslenjak's naturalization revoked under 8 U.S.C. § 1451(e). Maslenjak's timely appeal followed.

II.

This court reviews challenges to jury instructions for abuse of discretion. *United States v. Richardson*, 793 F.3d 612, 629 (6th Cir. 2015). A district court enjoys broad discretion "in crafting jury instructions and does not abuse its discretion unless the jury charge fails accurately to reflect the law." *United States v.*

Ross, 502 F.3d 521, 527 (6th Cir. 2007). "When jury instructions are claimed to be erroneous, we review the instructions as a whole, in order to determine whether they adequately informed the jury of the relevant considerations and provided a basis in law for aiding the jury in reaching its decision." *United States v. Kuehne*, 547 F.3d 667, 679 (6th Cir. 2008) (internal quotation marks and citation omitted). An improper jury instruction requires reversal "only where the instructions, when viewed as a whole, are found to be confusing, misleading, or prejudicial." *Richardson*, 793 F.3d at 629 (citation omitted).

A.

The first issue presented is whether 18 U.S.C. § 1425(a) contains an implied materiality requirement where a naturalized citizen like Maslenjak faces mandatory denaturalization following a conviction under § 1425(a). The issue is one of first impression in this Circuit.[1] Based on the plain language of the statute as well as the overall statutory scheme for denaturalization, we hold that proof of a material false statement is not required to sustain a conviction under 18 U.S.C. § 1425(a).

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[1] The district court concluded that proof of materiality was not required based on its reading of our unreported decision in *United States v. Tongo*. But we have never squarely addressed the question of whether materiality is an element of the offense under 18 U.S.C. § 1425(a). *United States v. Shordja*, 598 F. App'x 351, 354 (6th Cir. 2015) (noting that this Circuit had not answered the question); *United States v. Tongo*, 16 F.3d 1223, 1994 WL 33967, at **3-4 (6th Cir. Feb. 7, 1994) (refusing to read a materiality requirement into 18 U.S.C. § 1015(a) but apparently holding that there was sufficient evidence of materiality to sustain a conviction under 18 U.S.C. § 1425(a)).

"The starting point for any question of statutory interpretation is the language of the statute itself." *United States v. Coss*, 677 F.3d 278, 283 (6th Cir. 2012) (internal quotation marks and citation omitted). Section 1425(a) makes it a crime to "knowingly procure[] or attempt[] to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship." 18 U.S.C. § 1425(a). A plain reading of the statute suggests that materiality is not an element of the offense. "The definition of the elements of a criminal offense is entrusted to the legislature, particularly in the case of federal crimes, which are solely creatures of statute." *Dixon v. United States*, 548 U.S. 1, 7 (2006) (quoting *Liparota v. United States*, 471 U.S. 419, 424 (1985)). Accordingly, courts "ordinarily resist reading words or elements into a statute that do not appear on its face." *Dean v. United States*, 556 U.S. 568, 572 (2009). Obviously, the term "material" is found nowhere in § 1425(a). Without statutory support for an element of materiality, we are hard-pressed to conclude that materiality is an element of the offense under 18 U.S.C. § 1425(a).

As a matter of statutory interpretation, the absence of the term would normally end our inquiry. Maslenjak apparently concedes as much and instead argues on appeal that materiality is implied as an element of 18 U.S.C. § 1425(a). Maslenjak relies on a line of cases where other circuits have held that proof of materiality was required to denaturalize a citizen based on a violation of 18 U.S.C. § 1425(a). The Immigration and Naturalization Act ("INA") sets forth at 8 U.S.C. § 1451 two alternative procedures for denaturalization, one civil and one criminal. The civil procedure under 8 U.S.C. § 1451(a) provides for

denaturalization where one procures citizenship by concealing a material fact and expressly requires proof of materiality. The criminal procedure under 8 U.S.C. § 1451(e) makes denaturalization an automatic consequence of a criminal conviction under 18 U.S.C. § 1425. The cases Maslenjak cites for support have assumed that the required element of materiality applicable to civil denaturalization proceedings under § 1451(a) should also apply to a criminal denaturalization under § 1451(e), and by extension, a prosecution under 18 U.S.C. § 1425(a).

For the reasons more fully discussed below, we find this line of cases unpersuasive. Reading an implied element of materiality into 18 U.S.C. § 1425(a) is inconsistent with other laws criminalizing false statements in immigration proceedings and regulating the naturalization process. As Maslenjak's case illustrates, 18 U.S.C. § 1425 is but one statute within a broader statutory framework governing denaturalization. Here the district court denaturalized Maslenjak under 8 U.S.C. § 1451(e) after she was convicted of violating 18 U.S.C. § 1425(a). And her conviction under § 1425(a) required proof that Maslenjak had obtained her naturalization "contrary to law," meaning the government had to prove that her conduct violated at least one other law applicable to naturalization. At trial the government argued that Maslenjak's conduct violated at least two other laws, a criminal statute, 18 U.S.C. § 1015(a), as well as the INA's prerequisites for naturalization, 8 U.S.C. § 1427(a)(3), and its definitional statute, 8 U.S.C. § 1101(f)(6). In other words, the district court denaturalized Maslenjak under one statute but only after the jury had found her guilty of a crime under a second statute, which required as of one its elements

proof that Maslenjak's act was "contrary to" at least a third statute. We find an implied element of materiality in 18 U.S.C. § 1425(a) to be at odds with the other statutes at issue in Maslenjak's case.

Furthermore, the cases on which Maslenjak relies overlook the fact that Congress has created a two-track system for denaturalization. Denaturalization under § 1451(a) is a civil proceeding with its own evidentiary standard and shifting burden of proof; whereas, denaturalization under § 1451(e) is a mandatory ministerial act following a criminal conviction under 18 U.S.C. § 1425(a). There is little justification for reading an implied element of materiality into 18 U.S.C. § 1425 based on the fact that materiality is a required element for civil denaturalization under 8 U.S.C. § 1451(a). We turn now to examine in more depth each of the statutes applicable to Maslenjak's conviction under 18 U.S.C. § 1425(a) and denaturalization under 8 U.S.C. § 1451(e), starting with the INA itself and the denaturalization statute found at 8 U.S.C. § 1451.

B.

The INA creates what are essentially two alternative paths for denaturalization. Section 1451(a) provides for the revocation or setting aside of a citizen's naturalization where "the order and certificate of naturalization" were "illegally procured or [were] procured by concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451(a); *Kungys v. United States*, 485 U.S. 759, 772-73 (1988). The INA at § 1451(a) expressly requires proof that the citizen procured his naturalization by concealing a "material" fact; the term "material" appears on the face of the statute. The Supreme Court in *Kungys* concluded that

materiality is a required element of the government's case in a denaturalization proceeding under § 1451(a). *Kungys*, 485 U.S. at 767-68.[2]

Under § 1451(a), the government institutes a denaturalization proceeding by filing a petition and "affidavit showing good cause" in the district where the naturalized citizen resides. 8 U.S.C. § 1451(a). The naturalized citizen then has 60 days in which to file an answer. § 1451(b). The government has the initial burden to adduce "clear, unequivocal, and convincing" proof that the naturalized citizen has procured his naturalization by one of the improper means listed in § 1451(a), including the concealment of a material fact. *Fedorenko v. United States*, 449 U.S. 490, 505 (1981). "Any less exacting standard would be inconsistent with the importance of the right that is at stake in a denaturalization proceeding." *Id.* at 505-06. Once the government has carried its burden and proven the naturalized citizen improperly procured his naturalization, a "presumption of ineligibility" arises, "which the naturalized citizen is then called upon to rebut." *United States v. Puerta*, 982 F.2d 1297, 1303-04 (9th Cir. 1992) (quoting *Kungys*, 485 U.S. at 783-84 (Brennan, J., concurring)).

The burden-shifting of § 1451(a)'s denaturalization procedure underscores the fact that "[a] denaturalization suit is not a criminal proceeding," *Schneiderman v. United States*, 320 U.S. 118, 160

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[2] The Supreme Court's holding in *Kungys* about the definition of materiality and the question of whether the government's proof against Maslenjak satisfied the *Kungys* standard are not relevant to our decision because we hold that the government did not have to prove a material false statement in order to get a conviction under 18 U.S.C. § 1425(a).

(1943), but a "civil case." *Addington v. Texas*, 441 U.S. 418, 424 (1979). The Supreme Court has described denaturalization under § 1451(a) as "a suit in equity." *Fedorenko*, 449 U.S. at 516 (1981) (citations omitted). Rather than being a penal sanction, denaturalization "imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct. It simply deprives him of his ill-gotten privileges." *Johannessen v. United States*, 225 U.S. 227, 242 (1912). In contrasting a civil denaturalization proceeding under § 1451(a) with a typical criminal proceeding, the Sixth Circuit has remarked "[criminal cases offer many due process protections—*e.g.*, jury trial, indictment, beyond-a-reasonable-doubt burden of proof, right to counsel—that civil proceedings, including denaturalization proceedings, do not." *United States v. Mandycz*, 447 F.3d 951, 962 (6th Cir. 2006).

The denaturalization statute at § 1451(e) goes on to establish a second, alternative path to denaturalization. That paragraph states that "[w]hen a person shall be convicted under [18 U.S.C. § 1425] of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled." 8 U.S.C. § 1451(e). A criminal conviction under 18 U.S.C. § 1425 results in the mandatory denaturalization of the citizen, and the district court's task in this respect becomes purely "ministerial." *United States v. Inocencio*, 328 F.3d 1207, 1209 (9th Cir. 2003); *United States v. Maduno*, 40 F.3d 1212, 1217-18 (11th Cir. 1994); *United States v. Djanson*, 578 F. App'x 238, 241 (4th Cir. 2014). In

other words, a district court lacks any discretion in the matter, and no further process is due once the naturalized citizen is convicted of knowingly procuring his naturalization "contrary to law." And as in any criminal prosecution, the government has the burden to establish the elements of the offense beyond a reasonable doubt, and the accused has the right to all of the constitutional due process he would otherwise not receive as part of a civil denaturalization proceeding under § 1451(a), including the right not to testify or put on proof at all. *See Carter v. Kentucky*, 450 U.S. 288, 295-300 (1981). As already mentioned, it is this scenario that is at issue in Maslenjak's appeal.

Even though the district court denaturalized Maslenjak pursuant to 8 U.S.C. § 1451(e), Maslenjak does not argue that 8 U.S.C. § 1451(e) contains an implied element of materiality, perhaps with good reason. Unlike paragraph (a), paragraph (e) of 8 U.S.C. § 1451 never mentions "materiality," and this omission of the term strongly suggests that no showing of materiality is required for denaturalization under § 1451(e). "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Bates v. United States*, 522 U.S. 23, 29-30 (1997) (other citations omitted). As is clear from the statutory text, 8 U.S.C. § 1451(e) simply cross-references 18 U.S.C. § 1425 and makes denaturalization an automatic consequence of the criminal conviction. Maslenjak's argument then is that materiality is an implied element of the offense under 18 U.S.C. § 1425(a), which now brings us to the elements of that statute.

C.

As previously noted, 18 U.S.C. § 1425(a) makes it a crime to "knowingly procure[] or attempt[] to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship." 18 U.S.C. § 1425(a). We pause to note that the expansive language of the statute captures much more than making false statements. Paragraph (a) makes it illegal not only to procure or obtain naturalization but also any "documentary or other proof of naturalization or citizenship." Moreover, the statute criminalizes not just procuring these things only for one's self but for "any person." So a naturalized citizen might violate § 1425(a), for example, by improperly obtaining a forged naturalization certificate for a family member. The naturalized citizen's conduct of helping another person fraudulently procure forged citizenship papers violates § 1425(a), thereby making the naturalized citizen subject to mandatory de naturalization under 8 U.S.C. § 1451(e). The point is 18 U.S.C. § 1425(a) criminalizes far more than just the conduct of which Maslenjak was convicted, making a false statement on an application for naturalization.

In order to prove the offense in this case, the government had to establish that (1) Maslenjak procured her naturalization; (2) that she procured it in some manner contrary to law; and (3) that she did so knowingly. It is undisputed in this appeal that the district court correctly instructed the jury on the first and last elements. The real dispute concerns the district court's definition of "contrary to law" in its instructions to the jury and in particular its instruction

that a false statement need not be material in order for the statement to be "contrary to law."

The district court explained to the jury that making a false statement under oath in an immigration proceeding was "contrary to law" and violated 18 U.S.C. § 1425(a) if the act of making a false statement violated the immigration laws, regardless of whether the statement was material. The district court specified that "[o]ne of the laws which governs naturalization prohibits an applicant from knowingly making any false statement under oath, relating to naturalization." The district court's instruction in this regard clearly tracked the language of 18 U.S.C. § 1015(a), which makes it a crime to make "any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registration of aliens." 18 U.S.C. § 1015(a).

We hold that the district court's instruction on the "contrary to law" element was a correct statement of the law. First, 18 U.S.C. § 1425(a)'s "contrary to law" element is broad enough to cover the predicate violation of law at issue, namely, making false statements in an immigration proceeding in violation of 18 U.S.C. § 1015(a). We construe the phrase "contrary to law" to mean "contrary to all laws applicable to naturalization." The Supreme Court has emphasized the importance of strict compliance with the laws and requirements for naturalization.

> An alien who seeks political rights as a member of this Nation can rightfully obtain them only upon terms and conditions specified by Congress. No alien has the

> slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the government may challenge it ... and demand its cancellation unless issued in accordance with such requirements."

Fedorenko, 449 U.S. at 506 (quoting *United States v. Ginsberg*, 243 U.S. 472, 474-475 (1917)). The INA spells out these requirements. It follows then that the failure to comply with the INA's requirements for naturalization would be "contrary to law."

We have also affirmed convictions under § 1425(a) where the predicate or underlying violation of law was another criminal offense, and not just a failure to comply with the INA. *United States v. Damrah*, 412 F.3d 618, 622-23 (6th Cir. 2005) (Gibbons, J.) (affirming conviction under § 1425(a) & (b) for underlying violations of 18 U.S.C. §§ 1001, 1015(a)). Other circuits have likewise affirmed convictions under § 1425(a) for underlying criminal conduct. *United States v. Munyenyezi*, 781 F.3d 532, 536 (1st Cir.), *cert. denied*, No. 15-5264, 2015 WL 4456739 (Oct. 5, 2015) (affirming conviction under § 1425(a) for underlying violation of 18 U.S.C. § 1001(a)); *United States v. Mensah*, 737 F.3d 789, 803 (1st Cir. 2013) (affirming conviction under § 1425(a) for underlying violation of 18 U.S.C. § 1015(a)); *accord United States v. Alameh*, 341 F.3d 167, 171-72 (2d Cir. 2003) (affirming conviction under § 1425(b) for underlying violation of 18 U.S.C. § 1546(a)).[3] The phrase "contrary to law" is

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[3] The Board of Immigration Appeals has construed 18 U.S.C. § 1425(a)'s contrary to law element to include violations of

broad enough to include not only violations of the INA's administrative requirements for naturalization but also any criminal offense against the United States pertaining to naturalization, including making false statements.

The Ninth Circuit in *United States v. Puerta* seemed to read § 1425(a)'s "contrary to law" element to mean "contrary to the INA," and only the INA. The *Puerta* court stated "Congress has addressed the impact of immaterial false testimony *only* in the 'good moral character' provision in 8 U.S.C. § 1101(f)(6)." *Puerta*, 982 F.2d at 1302 (emphasis added). In point of fact, Congress has addressed the impact of immaterial false testimony in Title 18 and made it a criminal offense to make "any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registration of aliens." 18 U.S.C. § 1015(a). The Ninth Circuit apparently understood "contrary to law" to mean only "contrary to the INA." But if § 1425(a) reached only violations of the INA and its administrative prerequisites for citizenship, then § 1425(a)'s "contrary to law" element would actually mean "contrary to the INA but not 18 U.S.C. § 1015(a) or any other federal law criminalizing specific conduct in an immigration proceeding." We find no principled reason to construe the phrase in this limited way.[4] The most reasoned construction of

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both 18 U.S.C. § 1001 (the federal perjury statute) and § 1015(a). *Amouzadehv. Winfrey*, 467 F.3d 451, 457-58 (5th Cir. 2006).

[4] It is true that the phrase "contrary to law" appears in only a handful of federal criminal statutes besides 18 U.S.C. § 1425(a). *See* 18 U.S.C. § 545 (smuggling goods into the United States "contrary to law"); 18 U.S.C. § 1693 (mishandling mail "contrary to law"); 18 U.S.C. § 1697 (transport of persons acting as private

§ 1425(a)'s "contrary to law" element is simply "contrary to all laws applicable to naturalization," and not just the INA.

Second, the district court's instruction was an accurate statement of law because proof of materiality is not required to establish a violation of 18 U.S.C. § 1425(a) or the underlying violation of 18 U.S.C. § 1015(a). Having determined that § 1425(a) on its face does not require proof of materiality, we next look to Maslenjak's underlying conduct by which she procured her naturalization "contrary to law," making false statements in her immigration proceedings. Title 18 U.S.C. § 1015(a) criminalizes "any false statement under oath ..." in an immigration proceeding. 18 U.S.C. § 1015(a). We have construed § 1015(a) in a previous unreported decision and concluded that materiality is not an element of the offense. *Tongo,* 16 F.3d 1223, 1994 WL 33967, at **3-4. Every other circuit to consider the question has reached the same result and held that materiality is not an element of

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express who themselves transport letters "contrary to law"). As such, the case law construing the phrase "contrary to law," as Title 18 uses it, is somewhat scarce. Nevertheless, our construction of the federal smuggling statute, 18 U.S.C. § 545, and its "contrary to law" element further supports the notion that "contrary to law" should be read broadly to include criminal offenses against the laws of the United States. In *United States v. Teh,* the defendant was charged with smuggling bootleg films into the country "contrary to law" in violation of § 545. *United States v. Teh,* 535 F.3d 511 (6th Cir. 2008) (Gibbons, J.). We concluded that "contrary to law" under § 545 could include violations of 18 U.S.C. § 2318, which makes it a crime to traffic in counterfeit labels or packaging for motion pictures. *Id.* at 517-19. The case illustrates the principle that "contrary to law" should be understood to include "contrary to" federal criminal statutes, not just procedural and administrative requirements.

§ 1015(a). *United States v. Youssef*, 547 F.3d 1090, 1094 (9th Cir. 2008); *United States v. Abuagla*, 336 F.3d 277, 278 (4th Cir. 2003); Seventh Cir. Pattern Jury Instr. for 18 U.S.C. § 1015(a). The Ninth Circuit reasoned that § 1015(a) does not contain a materiality requirement based on "Congress's omission of 'material' from § 1015(a), combined with its inclusion of 'material' in a similar statutory provision (§ 1001(a)) ...." *Youssef*, 547 F.3d at 1094.[5] Therefore, § 1015(a) does not require proof of a false statement of material fact.

It follows that where as here the government satisfies the "contrary to law" element of § 1425(a) by proving an underlying violation of law and the underlying violation does not have as one of its elements a material false statement, no additional proof of materiality is required to obtain a conviction under § 1425(a). Otherwise, requiring proof of materiality simply as an element of § 1425(a) would lead to incongruous legal outcomes. For example, a person could violate 18 U.S.C. § 1015(a) by making "any [immaterial] false statement" on an application for naturalization but not be guilty of procuring his naturalization "contrary to law" in violation of 18 U.S.C. § 1425(a), unless the government could also show that the false statement was material. This result also alters the plain meaning of "contrary to

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[5] When asked at oral argument if any other federal statute criminalized immaterial false states, the United States inexplicably answered that there were none. Not only does 18 U.S.C. § 1015(a) criminalize immaterial false statements, the statute criminalizes immaterial false statements in immigration proceedings, and the district court's instructions to the jury on the "contrary to law" element closely tracked the language of § 1015(a).

law" to "contrary to the laws applicable to naturalization except 18 U.S.C. § 1015(a)." We find no warrant for such a cramped reading of the phrase "contrary to law."

Of course, the predicate act or conduct matters in a prosecution under § 1425(a). Where the government establishes the "contrary to law" element of § 1425(a) by proving an underlying criminal act and the criminal act has as one of its elements a material false statement, proof of materiality should arguably be required to obtain a conviction under § 1425(a). Our recent case of *United States v. Shordja*, 598 F. App'x 351 (6th Cir. 2015) illustrates this proposition. Like Maslenjak, the defendant in *Shordja* was charged with procuring his naturalization in violation of 18 U.S.C. § 1425(a). The defendant provided the same false answers to the same questions on the same application for naturalization. *Shordja*, 598 F. App'x at 351-52. But the government in *Shordja* conceded that proof of materiality was a required element of the offense under § 1425(a), a position seemingly inconsistent with its stance in this appeal. *Id.* at 354 ("Although we have not yet addressed the question of whether to recognize a materiality requirement in § 1425(a), the Government concedes that the statutory provision contains a materiality element.").[6]

However, unlike Maslenjak, the defendant in *Shordja* was also charged with one count of making false statements to a government official in violation of

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[6] Without deciding whether materiality was an element of 18 U.S.C. § 1425(a), we held that it was not plain error for the district court to fail to instruct the jury on materiality and that there was sufficient evidence of materiality to sustain the conviction. *Shordja*, 598 F. App'x at 354-55.

18 U.S.C. § 1001(a)(2). *See also Latchin*, 554 F.3d at 712. In other words, the government's theory of the case was that the defendant procured his naturalization "contrary to law" by violating the federal perjury statute, which has as one of its elements proof of materiality. 18 U.S.C. § 1001(a)(2) ("[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully makes any materially false, fictitious, or fraudulent statement or representation ... shall be [punished]."); *United States v. Gatewood*, 173 F.3d 983, 986 (6th Cir. 1999) ("The elements required to establish a violation of 18 U.S.C. § 1001 are .... that the false statement was material."). Where as in *Shorjda* a defendant is charged under 18 U.S.C. § 1425(a) with knowingly procuring naturalization contrary to law and the predicate violation of law is perjury under § 1001(a), it stands to reason that proof of materiality should be required to prove that the defendant procured his naturalization "contrary to law."

We need not fully resolve this last point to decide this case. Maslenjak was not charged under the perjury statute, and the district court did not instruct the jury on the elements of § 1001(a). The theory of the government's case against Maslenjak was that she procured her naturalization "contrary to law," in part by making false statements in an immigration proceeding in violation of 18 U.S.C. § 1015(a), not by committing perjury in violation of § 1001(a). A material false statement is not an element of the crime under § 1015(a). Therefore, we conclude that materiality is not an implied element of 18 U.S.C. § 1425(a) where the underlying "contrary to the law"

conduct is making a false statement in violation of 18 U.S.C. § 1015(a).

We recognize that Maslenjak's position finds support in a number of other circuit decisions holding that materiality is an implied element of 18 U.S.C. § 1425(a). By and large, we find these decisions unpersuasive. The leading case supporting Maslenjak's position is *United States v. Puerta* where the Ninth Circuit read an implied materiality requirement into § 1425(a). *Puerta*, 982 F.2d at 1301. The defendant in *Puerta* made false statements on his application for naturalization where he did not answer a question about whether he had ever used an alias (he had) and answered that he had not been absent from the United States since he entered the country for permanent residence (he was). *Id.* at 1298-99. The defendant was charged under 18 U.S.C. § 1425(a), and following a bench trial, the district court found him guilty of procuring his naturalization contrary to law and proceeded to denaturalize him pursuant to 8 U.S.C. § 1451(e). *Id.* at 1299-1300.

The Ninth Circuit reversed, holding that the government had to prove that the defendant's statements were material. The *Puerta* court based its holding on two factors: (1) proof of materiality was required in a civil denaturalization proceeding under 8 U.S.C. § 1451(a); and (2) the "gravity of the consequences" of mandatory denaturalization justified a showing of materiality under 18 U.S.C. § 1425(a). *Id.* at 1301 (citation omitted). Notably, the parties in *Puerta* agreed that the materiality requirement in the civil denaturalization proceeding implied materiality

as an element of 18 U.S.C. § 1425(a) as well. *Id.*[7] As a result, the Ninth Circuit did not apply the typical rules of statutory construction. The Ninth Circuit ultimately concluded that "Puerta's false statements were not material, and therefore may not form the basis of a criminal conviction under § 1425." *Id.* at 1304.

Other circuits have followed the Ninth Circuit's decision in *Puerta* but without engaging in their own analysis of the statutory language. The First Circuit has assumed like the Ninth Circuit that materiality is an element of 18 U.S.C. § 1425(a) because it is an element of civil denaturalization under 8 U.S.C. § 1451(a). *Mensah,* 737 F.3d at 808-09; *Munyenyezi,* 781 F.3d at 536. The Seventh Circuit adopted the materiality element, at least in part, because, just as in *Puerta,* the parties to the case agreed that it was an element of 18 U.S.C. § 1425(a). *United States v. Latchin,* 554 F.3d 709, 712, 713 n.3 (7th Cir. 2009).[8] And the Fourth Circuit has simply followed *Puerta* without any supporting reasoning of its own. *United States v. Aladekoba,* 61 F. App'x 27, 28 (4th Cir. 2003); *United States v. Agyemang,* 230 F.3d 1354, 2000 WL 1335286, *1 (4th Cir. Sept. 15, 2000); *United States v. Agunbiade,* 172 F.3d 864, 1999 WL 26937, at *2 (4th Cir. Jan. 25, 1999).

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[7] As *Puerta* illustrates, the government has taken inconsistent positions on the materiality issue in different cases before different courts at different times. We address this issue more fully below.

[8] The Seventh Circuit also analyzed the false statements at issue in *Latchin* as violations of 18 U.S.C. § 1001(a), the federal perjury statute. *Latchin,* 554 F.3d at 712. For the reasons already explained above, the distinction is important because 18 U.S.C. § 1001(a) expressly requires proof of materiality as an element of the offense. *See* 18 U.S.C. § 1001(a).

We find that *Puerta's* approach to materiality suffers from a number of problems. First and foremost, as a matter of statutory construction, 18 U.S.C. § 1425(a) does not suggest that materiality is an element of the offense. The term "material" does not appear in 18 U.S.C. § 1425(a) nor, for that matter, in 8 U.S.C. § 1451(e). This is not surprising because § 1425(a) criminalizes procuring citizenship or naturalization in any way that is "contrary to law," not just by making false statements. In fact, 18 U.S.C. § 1425(a) reaches far more conduct than making false statements or even procuring one's own citizenship in some way contrary to law. The statute can be properly read to criminalize the procurement of any proof of citizenship or document related to naturalization or citizenship for "any person," not just one's own self. The Ninth Circuit's conclusion that § 1425(a) contains an implied element of materiality then lacks any support in what is already the broad and plain language of the statute.

The Ninth Circuit's approach also ignores the fact that other violations of federal law pertaining to false statements in immigration proceedings do not require proof of materiality. It is well settled in the Ninth Circuit (and in other circuits following the Ninth's holding in *Puerto)* that proof of materiality is not a required element of 18 U.S.C. § 1015(a). *Youssef,* 547 F.3d at 1094; *see also Abuagla,* 336 F.3d at 278; Seventh Cir. Pattern Jury Instr. for 18 U.S.C. § 1015(a). Nor is proof of materiality required in other sections of the INA addressing false testimony. The INA at 8 U.S.C. § 1427(a)(3) makes "good moral character" a condition precedent to naturalization. 8 U.S.C. § 1427(a)(3). And 8 U.S.C. § 1101(f)(6) precludes a finding of "good moral character" for any

naturalization applicant who "has given false testimony for the purpose of obtaining any benefit" under the INA. 8 U.S.C. § 1101(f)(6).[9] The Supreme Court in *Kungys* concluded that § 1101(f)(6) does not contain a materiality requirement. *Kungys*, 485 U.S. at 779-80 (holding that 8 U.S.C. § 1101(f)(6) does not contain a materiality requirement for false testimony). Reading an implied materiality element into § 1425(a) would mean then that a defendant could give immaterial false testimony for the purpose of obtaining an immigration benefit, thereby failing to meet the requirements for naturalization under 8 U.S.C. § 1427(a)(3) and 8 U.S.C. § 1101(f)(6) but still not be guilty of knowingly procuring his citizenship "contrary to law" in violation of 18 U.S.C. § 1425(a). Requiring proof of materiality under 18 U.S.C. § 1425(a) is incompatible with these other federal laws applicable to false statements in immigration proceedings.

As *Puerta* and its progeny highlight, the United States has taken a contrary position on the materiality issue in different cases before different courts, including this one, though we have noted why *Shordja* is distinguishable in this regard. While the

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[9] The district court also instructed the jury that it could find Maslenjak guilty under 18 U.S.C. § 1425(a) if the jury found that she had procured her naturalization "contrary to" the INA at 8 U.S.C. §§ 1427(a)(3) and 1101(f)(6), though the jury instructions did not actually cite those code sections. The district court instructed the jury that "false testimony" would defeat a finding of good moral character. The instructions did not, however, address whether the false testimony had to concern a material fact. On appeal Maslenjak has not challenged this aspect of the jury instructions, though she does raise other objections to the district court's instructions on good moral character. We address those challenges more fully below.

government could not account for these inconsistencies at oral argument, "[t]here is, of course, no rule of law to the effect that the Government must be consistent in its stance in litigation over the years." *Barrett v. United States*, 423 U.S. 212, 222 n.6 (1976) (citation omitted); *see also* 13 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3530 (3d ed.) ("Just as courts are not bound, so also is the government not bound. The fact that it has conceded a point in one case does not preclude it, without more, from changing its position in a later case.").

Still, it is one thing to take contrary positions in different cases "over the years." It is more problematic that the government has taken inconsistent positions on the materiality issue at key points in the case now before us. The government sought an indictment charging Maslenjak with making material false statements and even adduced proof at trial relevant to the materiality element only to argue at the charge conference and now on appeal that proof of materiality is not required.[10] The government's prevarication notwithstanding, our task is to determine whether the district court properly charged the jury on the elements of the offense, a task which begins and ends with a proper construction of the relevant statutes. Therefore, the government's inconsistency does not

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[10] While Maslenjak calls attention to the discrepancy between the indictment and the jury instructions, she has not argued on appeal that the jury instructions resulted in a constructive amendment of the indictment. *See United States v. Hynes*, 467 F.3d 951, 962 (6th Cir. 2006) (holding that a constructive amendment of the indictment occurs where the defendant can show "a combination of evidence *and* jury instructions that effectively alters the terms of the indictment"). As a result, we need not consider this issue further.

affect our analysis of the plain language of 18 U.S.C. § 1425(a) or any of the other statutes implicating Maslenjak's denaturalization.

The only compelling reason left to adopt the Ninth Circuit's approach to materiality in *Puerta* is the equity of mandatory denaturalization on anything less than proof of a materially false statement. As Maslenjak asserted at oral argument, denaturalization is a "unique" and "severe" sanction amounting to "banishment," and so the same evidentiary standard should apply whether the government seeks denaturalization in a civil proceeding or a criminal proceeding. Whatever appeal this rationale might have, the argument invites us to overlook the plain text of 18 U.S.C. § 1425(a) and disregard the overall statutory scheme Congress has enacted for denaturalization under the INA.

Construing 8 U.S.C. § 1451 and 18 U.S.C. § 1425 together, Congress has created two alternative approaches to denaturalization, one civil and one criminal. The denaturalization procedure established under 8 U.S.C. § 1451(a) is civil and equitable in nature, initiated simply by filing a petition in the district court where the citizen resides, and carries a "clear, unequivocal, convincing" standard of proof. Section 1451(e) creates a second statutory path to denaturalization which is criminal in nature, because § 1451(e) makes denaturalization mandatory where the citizen is found guilty of violating 18 U.S.C. § 1425. Obviously, the alternative procedure requires the government to seek an indictment and establish probable cause, afford the citizen all of the constitutional due process rights owed whenever a person is accused of a criminal act, and meet a higher

burden of proof (beyond a reasonable doubt).[11] *See Mandycz*, 447 F.3d at 962 ("Criminal cases offer many due process protections—*e.g.*, jury trial, indictment, beyond-a-reasonable-doubt burden of proof, right to counsel—that civil proceedings, including denaturalization proceedings, do not").

Accepting then that Congress has provided two alternative procedures and standards of proof under

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[11] The Supreme Court has sent mixed signals about where the "clear, unequivocal, and convincing" standard of proof falls on the continuum of evidentiary burdens and particularly how it differs from proof beyond a reasonable doubt. In an older decision, the Supreme Court described the "clear, unequivocal, and convincing" burden as "substantially identical with that required in criminal cases—proof beyond a reasonable doubt." *Klapprott v. United States*, 335 U.S. 601, 612 (1949). Somewhat more recently, the Supreme Court described the "clear, unequivocal, and convincing" burden as an "intermediate standard" designed to "protect particularly important individual interests in various civil cases" including civil denaturalization proceedings under U.S.C. § 1451(a). *Addington v. Texas*, 441 U.S. 418, 424-25 (1979). The *Addington* court went on to remark in dicta that the word "unequivocal" "taken by itself means proof that admits of no doubt, a burden approximating, if not exceeding, that used in criminal cases." *Id.* at 432. Later still, the Supreme Court considered the standard of proof in a deportation case and noted that "[t]he BIA for its part has required only 'clear, unequivocal and convincing' evidence of the respondent's deportability, not proof beyond a reasonable doubt." *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984). This single comment suggests that the clear, unequivocal, and convincing burden of proof is an elevated standard but still just short of or only "approximating" proof beyond a reasonable doubt. Otherwise, we have summarized the "clear, unequivocal, and convincing" standard as follows: "So, the omission of 'unequivocal' makes a difference. The 'clear, unequivocal, and convincing standard' is a more demanding degree of proof than the 'clear and convincing' standard." *Ward v. Holder*, 733 F.3d 601, 605 (6th Cir. 2013).

§ 1451(a) and § 1451(e), the explicit requirement of materiality under one approach but not the other is actually consistent with a two-track statutory scheme for denaturalization. In a civil denaturalization suit, the government can bring its case simply by filing an equitable petition, proceed as in a civil case, and satisfy a lesser burden of proof than beyond a reasonable doubt. In light of the slightly lower burden of proof, Congress has required the government to prove that the naturalized citizen has concealed a material fact. By contrast, in a criminal case resulting in denaturalization, the government must prove the charge under 18 U.S.C. § 1425 beyond a reasonable doubt while meeting the demands of constitutional due process. Congress has not required proof of materiality in that scenario arguably because of the higher burden of proof, the additional safeguards for the naturalized citizen's constitutional rights, and the broad sweep of § 1425 itself.

So in a criminal prosecution under § 1425, the Constitution itself cures any concerns about the "gravity of the consequences" of mandatory denaturalization without requiring proof of materiality. *Puerta* at 1301. And if it were otherwise and materiality was a required element of both civil and criminal denaturalization proceedings, the government would have little incentive to ever pursue the denaturalization of a naturalized citizen for making false statements through a criminal indictment under 18 U.S.C. § 1425. The government could achieve the same result, denaturalization, by proving the same materiality element but in a civil proceeding under a lesser standard of proof and with less constitutional due process. Thus, reading an implied element of materiality into 18 U.S.C. § 1425(a)

would yield yet another unintended, anomalous result. Despite the equities supporting Maslenjak's position, "[w]e are not at liberty to rewrite the statute to reflect a meaning we deem more desirable" but "[i]nstead, we must give effect to the text Congress enacted." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 228 (2008). In the final analysis, we find the arguments and reasoning supporting an implied element of materiality under 18 U.S.C. § 1425 to be lacking.

Having established that materiality is not required to prove a violation of 18 U.S.C. § 1425(a) or 18 U.S.C. § 1015(a), we hold that the district court's instruction was a correct statement of the law. With this holding, we need not reach the issue of whether the government proved Maslenjak's false statements to be material.

III.

In her second claim on appeal, Maslenjak argues that the district court erroneously instructed the jury that it could also convict her under 18 U.S.C. § 1425(a) if it found that Maslenjak did not possess good moral character. As already mentioned, 8 U.S.C. § 1427(a)(3) establishes "good moral character" as a requirement for naturalization. 8 U.S.C. § 1427(a)(3). Although the INA does not define what "good moral character" is, the INA does define what it is not. Under 8 U.S.C. § 1101(f)(6), no one can be found to be a person of "good moral character" if the person "has given false testimony for the purpose of obtaining any benefit" under the INA. 8 U.S.C. § 1101(f)(6). In its instructions to the jury defining the "contrary to law" element of the offense under 18 U.S.C. § 1425(a), the district court stated that Maslenjak did not satisfy the "good moral character" requirement of 8 U.S.C.

§ 1427(a) if the government could show that she had given "false testimony for the purpose of obtaining any immigration benefit." ECF 62, Jury Instr., Page ID 1121.

On appeal, Maslenjak does not argue that false testimony to obtain an immigration benefit cannot satisfy § 1425(a)'s "contrary to law" element. Several circuits have affirmed denaturalization based on a naturalized citizen's false testimony and violation of the good moral character requirements of 8 U.S.C. § 1101(f)(6). *Munyenyezi*, 781 F.3d at 537 (affirming conviction under § 1425(a) and subsequent denaturalization under 8 U.S.C. § 1451(e) based on failure to meet "good moral character"); *United States v. Rogers*, 104 F.3d 355, 1996 WL 685759, at * 1 (2d Cir. Nov. 29, 1996) (same); *see also United States v. Suarez*, 664 F.3d 655, 658 (7th Cir. 2011) (affirming civil denaturalization under 8 U.S.C. § 1451(a) for underlying violation of 8 U.S.C. § 1101(f)(3) & (8)); *United States v. Dang*, 488 F.3d 1135, 1139-40 (9th Cir. 2007) (affirming civil denaturalization under 8 U.S.C. § 1451(a) for underlying violation of 8 U.S.C. § 1101(f)(6)); *United States v. Jean-Baptiste*, 395 F.3d 1190, 1193-94 (11th Cir. 2005) (affirming civil denaturalization under 8 U.S.C. § 1451(a) for underlying violation of 8 U.S.C. § 1101(f)(3) & (8)); *United States v. Sokolov*, 814 F.2d 864, 873-74 (2d Cir. 1987 (affirming civil denaturalization under 8 U.S.C. § 1451(a) for underlying violation of 8 U.S.C. § 1101(f)(6)). Instead Maslenjak argues that convicting her for lack of good moral character is unconstitutional. We find both of her constitutional arguments to be without merit.

A.

First, Maslenjak contends that her conviction amounts to an unconstitutional criminal punishment based on her status. The Supreme Court has held that a state law criminalizing status and not conduct violates the Eighth Amendment's prohibition on cruel and unusual punishment. *Robinson v. California*, 370 U.S. 660, 667 (1962) (striking down a criminal law against being drug addict); *but see Powell v. State of Tex.*, 392 U.S. 514, 533 (1968) (upholding a criminal law against public drunkenness). In other words, the law can only punish "doing" (the *actus reus)* and not merely "being" (what could be called the *status reus).* Maslenjak's conviction does not run afoul of this principle. Maslenjak was found guilty of knowingly procuring her naturalization contrary to law, and her guilty act was illegally procuring or obtaining her naturalization. Section 1425(a) criminalizes conduct and not status by punishing the act of knowingly procuring naturalization in some way contrary to the laws applicable to naturalization. Section 1425(a) does not make it a crime to lack good moral character. Maslenjak's first constitutional challenge is not convincing.

It is true that the government's theory of the case was based on Maslenjak's ineligibility for naturalization. The United States presented proof at trial and argued to the jury that Maslenjak was not eligible for naturalization because of her false testimony about the answers on her N-400 Application for Naturalization. Under 8 U.S.C. § 1101(f)(6), Maslenjak's false testimony for the purpose of obtaining a benefit disqualified her as a candidate for naturalization. And it is well-established that

"[c]itizenship is illegally procured any time the applicant has failed to comply with any of the congressionally imposed prerequisites to the acquisition of citizenship." *United States v. Sprogis*, 763 F.2d 115, 117 n.2 (2d Cir. 1985) (quoting *Fedorenko*, 449 U.S. at 506)). Maslenjak was not found guilty of a particular status, i.e. a lack of good moral character, but guilty of culpable conduct, i.e. procuring her naturalization with the knowledge that she was ineligible because she had given false testimony.

Maslenjak again relies on the Ninth Circuit's decision in *Puerta* for support. The Ninth Circuit held there that "simply being a person who cannot establish [good moral character] in court is not a crime." *Puerta*, 982 F.2d at 1302. The Ninth Circuit's reasoning on this point is not persuasive. In a prosecution under 18 U.S.C. § 1425(a), the defendant does not have the burden to establish anything at all, including her good moral character. It is the government's burden to prove beyond a reasonable doubt that the defendant knowingly procured her naturalization in some way contrary to law, all in violation of a criminal statute, 18 U.S.C. § 1425(a). Although the INA at 8 U.S.C. § 1101(f)(6) defines what good moral character is not, the INA does not make it crime to lack good moral character. The Ninth Circuit also concluded that Congress had only addressed false testimony in an immigration proceeding at 8 U.S.C. § 1101(f)(6). But, as we have already noted, the Ninth Circuit's observation is not an accurate statement of law. Congress has actually made it a crime to make "any false statement under oath" in a matter related to naturalization pursuant to 18 U.S.C. § 1015(a). As such, there is no support for Maslenjak's claim that

8 U.S.C. § 1101(f)(6) somehow creates a status-based crime for lacking good moral character.

B.

Second, Maslenjak claims that the INA's good moral character requirement is unconstitutionally vague. "As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *United States v. Coss*, 677 F.3d 278, 289 (6th Cir. 2012) (quoting *Gonzales v. Carhart*, 550 U.S. 124, 148-49 (2007) (other quotations omitted)). "What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is." *United States v. Williams*, 553 U.S. 285, 306 (2008). A challenge based on a statute's purported vagueness must be considered on "an as-applied basis" so long as the statute does not involve First Amendment rights. *Johnson v. United States*, 135 S. Ct. 2551, 2580, (2015) (Thomas, J., concurring) (quoting *United States v. Mazurie*, 419 U.S. 544, 550 (1975)). Where as here a defendant challenges a statute for vagueness under the Due Process Clause, the challenge "rest[s] on the lack of notice, and hence may be overcome in any specific case where reasonable persons would know that their conduct is at risk." *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988). "Thus, in a due process vagueness case, we will hold that a law is facially invalid only if the enactment is impermissibly vague in *all* of its applications."

Johnson v. United States, 135 S. Ct. at 2580 (quoting *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-95 (1982)).

We hold that 8 U.S.C. § 1101(f)(6) is not unconstitutionally vague as applied to Maslenjak.[12] That section specifies that "[n]o person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was one who has given false testimony for the purpose of obtaining any benefits under this chapter." 8 U.S.C.A. § 1101(f)(6). The statute defines a series of factors which will preclude a finding of good moral character. The particular factor challenged by Maslenjak defines conduct, giving false testimony, and calls for the determination of "clear questions of fact" susceptible to "a true-or-false determination, not a subjective

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[12] Maslenjak argues in her opening brief that 8 U.S.C. § 1101(f)(9), the statute's catch-all provision, is unconstitutionally vague. That paragraph follows a non-exhaustive list of factors that will preclude a finding of good moral character; the paragraph states as follows: "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." 8 U.S.C. § 1101(f)(9).

We need not reach this issue because the district court did not instruct on this theory, and Maslenjak has otherwise failed to demonstrate how this paragraph was "applied" to her. Maslenjak does claim that "[n]othing in the instructions defined 'good moral character' or even limited the methods by which the government could prove that Ms. Maslenjak lacked good moral character." Opening Br. 43. But Maslenjak's claim is belied by what the district court actually stated in its charge to the jury. The district court explained only one means of establishing a lack of good moral character, and that was giving "false testimony for the purpose of obtaining any immigration benefit."

judgment such as whether conduct is 'annoying' or 'indecent.'" *Williams*, 553 U.S. at 306; *see also Dang*, 488 F.3d at 1141 (holding that 8 U.S.C. § 1101(f)(9), the good moral character catch-all provision and its implementing regulation was not unconstitutionally vague as applied in that case). Therefore, we reject Maslenjak's vagueness challenge.

C.

Maslenjak next challenges the district court's instructions to the jury about what the government had to prove to show that Maslenjak had given false testimony for the purpose of procuring an immigration benefit and how her false testimony meant she did not meet the INA's good moral character requirement. Specifically, Maslenjak argues that the district court failed to explain that "testimony" under § 1101(f)(6) had to be an oral statement or that Maslenjak had to give false testimony with the specific intent to obtain an immigration benefit. The Supreme Court in *Kungys* carefully construed § 1101(f)(6) and concluded that the false testimony described in the statute need not be material in order to find that a person lacked good moral character. In explaining why its "literal reading of the statute does not produce draconian results," the *Kungys* court first noted that "'testimony' is limited to oral statements made under oath" and does not include "other types of misrepresentations or concealments, such as falsified documents or statements not made under oath." *Kungys*, 485 U.S. at 780 (citations omitted). Whether a statement or misrepresentation qualifies as "testimony" is a question of law. *Id.* at 782. The Supreme Court also explained that its literal reading of § 1101(f)(6) did not produce unduly harsh results because that section "applies to only those

misrepresentations made with the subjective intent of obtaining immigration benefits" and not "misrepresentations made for other reasons, such as embarrassment, fear, or a desire for privacy, ..." *Id.* at 780. Whether the applicant acted with the required intent is, of course, a question of fact for the jury. *Id.* at 782.

We hold that the district court did not abuse its discretion because the instructions, taken as a whole, accurately reflected the law. *Ross*, 502 F.3d at 527. With respect to the instructions about the necessary intent, the jury charge clearly stated that "[g]iving false testimony for the purpose of obtaining any immigration benefit precludes someone from being regarded as having good moral character," which in turn means "the applicant is not entitled to naturalization." ECF 62, Jury Instr., Page ID 1121. This instruction is a clear and accurate statement of law. Therefore, no abuse of discretion occurred.

As for the instruction about "false testimony," the district court did not define "testimony" to limit the term to oral statements and did not instruct the jury which of Maslenjak's statements constituted "testimony." More fundamentally, the district court did not recognize that the issue of whether any of Maslenjak's statements even met the legal definition of "testimony" under 8 U.S.C. § 1101(f)(6) was a question of law. The instruction as given did not address any of these aspects of the "false testimony" element, as the Supreme Court described it in *Kungys*. Nevertheless, when viewed as a whole, it cannot be said that the jury instructions were "confusing, misleading, or prejudicial." *Richardson*, 793 F.3d at 629.

And even if the district court's instruction about "testimony" was erroneous, the error was harmless. The harmless-error standard applies "to cases involving improper instructions on a single element of the offense." *Neder v. United States*, 527 U.S. 1, 9 (1999); *Richardson*, 793 F.3d 612, 631 ("[A] jury instruction that misdescribes or omits an element of an offense is subject to harmless error review.") (citation omitted). Any error regarding the jury instruction on the single element of "false testimony" was harmless in this case. The record is replete with oral statements made by Maslenjak under oath during her interviews with immigration officials, which meet the legal definition of "testimony." Perhaps more importantly, the evidence the jury heard does not include any other proof "that could rationally lead to a contrary finding with respect to the omitted element." *Richardson*, 793 F.3d at 632 (quoting *Neder*, 527 U.S. at 19). Therefore, any error in the jury instructions was harmless.

IV.

For the reasons stated here, we AFFIRM the judgment of the district court.

CONCURRENCE

JULIA SMITH GIBBONS, concurring. I concur with some reluctance in the lead opinion's carefully-reasoned analysis. Initially, I was not inclined to differ from our sister circuits' interpretation of 18 U.S.C. § 1425(a), but this analysis has persuaded me that the view most faithful to the statute is that materiality is not an element of the § 1425(a) offense.

I am uncertain what goal Congress intended to further by omitting materiality from the elements of § 1425(a). I have located no other federal criminal statute that punishes a defendant for an immaterial false statement. Nor have I located any analogous context in which the elements of a crime are less onerous than the elements of the related civil penalty proceeding.

Finally, I echo a point made in the lead opinion but put it more bluntly. The government's inconsistency in this case and on this issue is puzzling and indeed inappropriate. This is particularly so because the government, in response to questioning at oral argument, was unable to articulate any interest of the United States in prosecuting statements that are immaterial.

For all these reasons, our result here is troublesome. Yet we are not free to select our own notion of the best result in a case but instead are guided by what the law requires. That principle trumps any reluctance about joining the lead opinion.

FILED
May 27, 2016
Deborah S. Hunt
Clerk

No. 14-3864

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DIVNA MASLENJAK,

Defendant-Appellant.

ORDER

BEFORE: GIBBONS and McKEAGUE, Circuit Judges; and ANDERSON, District Judge.*

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

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* The Honorable S. Thomas Anderson, United States District Judge for the Western District of Tennessee, sitting by designation.

FILED
2013 MAR 5
PM 5:03
U S District
Court Northern
District of Ohio
Cleveland

Case No. 1:13cr126
Title 18, Sections 1425(a) and 1423, United States Code

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIVNA MASLENJAK,

Defendant.

JUDGE BENITA Y. PEARSON

INDICTMENT

COUNT 1

The Grand Jury charges:

On or about August 3,2007, in the Northern District of Ohio, Eastern Division, DIVNA MASLENJAK, while a citizen of Bosnia Herzegovina, and an alien, did knowingly procure, contrary to law, her naturalization, to wit: DIVNA MASLENJAK made material false statements on a Form N-400 Application for Naturalization by answering "no" to question No. 23 which asked whether the applicant had "knowingly given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion or removal" and by answering "no" to question No. 24 which asked whether the applicant had "ever lied to any U.S. government official to gain entry or admission into the

United States" and answering the same during her interview for naturalization when DIVNA MASLENJAK then well knew that she had lied to government officials when applying for her refugee status and her lawful permanent residence status and thereby gained admission into the United States, in violation of Title 18, Section 1425(a), United States Code

COUNT 2

The Grand Jury further charges:

On or about February 6, 2009, in the Northern District of Ohio, Eastern Division, DIVNA MASLENJAK, did knowingly use an unlawfully issued certificate of naturalization for the purpose of filing a Form I-130 Petition for Alien Relative to assist her husband in securing his lawful permanent resident status based upon their marriage, said certificate of naturalization having been obtained contrary to law by DIVNA MASLENJAK's material false statements made during the application process for naturalization, in violation of Title 18, Section 1423, United States Code.

A TRUE BILL.

Original document-Signatures on file with the Clerk of Courts, pursuant to the E-Govemment Act of 2002.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

DIVNA MASLENJAK,
Defendant.

Case No. 1:13-cr-126
Youngstown, Ohio
Tuesday, April 15, 2014
8:50 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

JURY TRIAL

* * *

(Jury in at 9:03 a.m.)

THE CLERK: The matter before the court is Case Number 1:13-cr-126, the United States of America versus Divna Maslenjak.

THE COURT: Good morning, everyone. You may take your seats. Welcome back, Jurors.

Jurors, in a moment, you will hear opening statements. The government will go first. Ms. Maslenjak's counsel will go next.

After the completion of opening statements, you will begin to hear evidence from witness testimony, and defense counsel may cross-examine any one of the government's witnesses.

For the United States, are you ready, sir?

[Government counsel]: We are, Your Honor.

THE COURT: You may proceed.

[Government counsel]: Thank you.

Good morning.

JURORS: Good morning.

[Government counsel]: What you see before you is a Certificate of United States Citizenship. And it's more than a piece of paper. It represents all the rights, privileges and responsibilities of U.S. citizenship. And for the millions of people who weren't born in this country, but who long to be a United States citizen, this is the goal. And our country doesn't just give these away; you have to earn them. You have to be in the country legally, you have to follow the rules and you have to tell the truth.

And the problem, as the evidence will show, with the defendant's claim to U.S. citizenship is that it was built on a foundation of lies. And that foundation crumbled when the defendant admitted under oath that the story that she told to come to the United States as a war refugee from Bosnia just wasn't true.

Ladies and gentlemen of the jury, my name is Adam Hollingsworth, and I represent the United States of America, along with my co-counsel, Phil Tripi. And seated with us today at counsel table is Senior Special Agent Tom Guastini.

The evidence that you are about to hear will show that the defendant's claim to U.S. citizenship was built on a foundation of lies. And what were they?

The first one was that during the Bosnian War, from 1992 to 1997, she was separated from her husband. That she—that she was in Bratunac, in Bosnia, right there (indicating), and that her husband was forced to hide out in Serbia for five years to avoid serving in the military.

That's the story that she told the United States Government. That from 1992 to 1997, they lived in two separate countries, separated by a war zone, so that her husband could avoid being forced to fight in the war in Bosnia.

What was the second lie? The evidence will show that as the basis for defendant's refugee status, for her request to the United States Government to open up its arms and protect her from persecution, that she was afraid of returning to her home country because her husband didn't fight, that she wouldn't be welcome back, that she and her husband would be persecuted because he didn't fight. That was the basis for her refugee claim.

And through the testimony and evidence and documents that you are about to see, you will learn that her husband, in fact, was not in Serbia hiding out, but was fighting in Bosnia from 1992 to 1995, that he was a supervisory officer in their military during the Bosnian War.

* * *

DIRECT EXAMINATION OF TODD E. GARDNER

BY [Government counsel]:

Q. Good morning. Mr. Gardner, could you please state your name for the record and please spell the last name?

A. Yes. My name is Todd E. Gardner. And Gardner is G-a-r-d-n-e-r.

Q. Can you tell us a little bit about your current position?

A. I'm currently an adjudication officer with the Department of Homeland Security, United States Citizenship and Immigration Services.

Q. Do you have any special area that you're concentrating on at this point in time?

A. Right now I am the lead representative for one of the directorates, the Refugee, Asylum, and International Operations Directorate, and I am representing this directorate in our Modernization Project.

* * *

BY [Government counsel]:

Q. Sir, is this the document you were asked—one of the documents you were asked to review?

A. Yes, it is.

Q. Can you identify what document that is, please?

A. Yes. This is a—what's called a Registration for Classification as a Refugee. It's also known as the I-590. And it is the main application form for refugee status.

* * *

Q. Okay. Mr. Gardner, I want to talk generally about the types of information that are required to be filled out on these applications and the significance for requesting that information on the part of the United States.

There's some biographical at the beginning; is that correct?

A. Yes, there is. There's such things as name, address, dates of birth, place of birth, et cetera.

Q. All right. Referring you specifically to Question Number 5 and the short answer that's in there, I believe you had earlier testified that sometimes they incorporate another document.

Can you tell us—can you identify when they ask for "Reasons (State in detail)," what is that actually requesting of the applicant?

A. What they're asking, it assumes the first—the couple of questions before it, "Country from which I fled," "On or about," and when they say "Reasons," they mean "Why did you flee that country?" So they would want a narrative answer as to the reasons why you felt compelled to flee your country.

Q. And you had indicated earlier that oftentimes they take advantage of incorporating another document. Did they do that in this particular case; or Divna Maslenjak, does it indicate that she did that in this particular case?

A. In this particular case, what the caseworker, the Refugee Service Center caseworker entered, is to see the IOM bio.

Q. All right. And the IOM bio would be what type of a document, if you can tell us?

A. The IOM bio was a document produced by the Refugee Service Center. In this case, it was IOM, or International Organization for Migration, who was the contractor. And they would produce a document, their own document. It's—I believe it's a case summary sheet. It was part of their information—information gathering to assist the applicant to fill out the I-590.

Q. Showing you what's been marked for purposes of identification as Government Exhibit 26.

Can you tell us, do you recognize that document?

* * *

Q. Was this part of the documents you were asked to review, sir?

A. Yes, it is.

Q. And when we refer on the first page to "See IOM bio," would this qualify as that document that would be contained in Ms. Maslenjak's alien file?

A. Yes, this is the document that would be the one referred to.

Q. And did this document—without going into details, would this document have provided the basis for the refugee claim?

A. This would have provided a basis for the refugee claim. There is also the interview, and that also forms a basis.

* * *

DIRECT EXAMINATION OF MONICA RAHMEYER

BY [Government counsel]:

Q. Good afternoon.

A. Good afternoon.

Q. Could you please state your name, speaking loudly into the microphone, and spell your last name for the court reporter?

A. Yes. My name is Monica Rahmeyer. It's M-o-n-i-c-a, R-a-h-m-e-y-e-r.

Q. Where do you work?

A. I currently work with USCIS, that's U.S. Citizenship and Immigration Services, as the administrative appeals officer.

Q. How long have you worked for USCIS?

A. I started in March of '95.

* * *

Q. So, could you please walk the members of the jury through your work history, beginning when you first started with UCIS—USCIS?

A. Yes. I began as an asylum officer, again, in March of '95. I worked as an asylum officer for several years, probably about four. After that, I became a quality assurance training coordinator with the asylum office as well. It was a promotion. That was for about two years.

After that I became a supervisory asylum officer. And then I worked as a trial attorney for USCIS. And then I began as an administrative appeals officer. So I work for the Administrative Appeals Office as an appeals officer.

Q. When you became a supervisory asylum officer, did you have individuals working underneath you?

A. Yes. I had about five officers that I oversaw.

Q. And what was your role in overseeing them?

A. Basically, they would write decisions. They would do the interviews of the people that were applying for asylum. Sometimes I would monitor the interviews to make sure that they were doing legally sufficient and factually explicit interviews.

And I would review all of the decisions that they wrote and make sure that they met all of the guidelines that we needed them to meet for a proper and sufficient decision.

Q. Would you have to approve their decision about whether or not to grant someone asylum?

A. Yes. I was the final signatory on the decisions.

Q. At some point in your experience, were you stationed overseas to perform your duties?

A. Yes, I was. When I was working as an asylum officer, I had a few occasions that I was able to work overseas doing refugee processing.

Q. Where were you located?

A. The first time I went overseas, I went to Croatia, and I was interviewing refugees from the Bosnian—there was the Bosnia-Herzegovina War Conflict. That was during the '90s. And I did interview the refugees that were of Croatian ethnicity in Croatia.

Q. Any other times that you worked overseas?

A. Yes. I did an overseas processing detail in Frankfurt, Germany. That was approximately 60 days. And the first half of that detail I worked in Frankfurt. Again, it was doing refugees from the Bosnia-Herzegovina Conflict. The people in Germany tended to be people that were Muslims, or maybe involved in mixed marriages between different ethnicities.

And then the other half of that time I spent in Yugoslavia, in Belgrade.

* * *

Q. I'd like to turn your attention to your specific overseas assignment in Belgrade, Serbia.

A. All right.

Q. When did you arrive in Belgrade?

A. In Belgrade, it was in the—it was in the spring of '98. I—yeah.

Q. What was it—

A. I'm not sure. It was somewhere between March and August—and April.

Q. In 1998?

A. '98.

Q. What was a typical day like for you when you were in Belgrade?

A. In Belgrade, we were interviewing up to ten families a day, and they were always interviewed as family units. These were pretty much always ethnic Serbs that had been living in Bosnia and they were—for whatever reason, they were not—they were basically forced out of Bosnia, from their—from their place they lived because of ethnic cleansing. And so we would interview those families.

* * *

Q. You mentioned that oftentimes you would interview families as a unit.

A. Correct.

Q. In situations like that, how would you conduct the interview?

A. Well, I mean, they would all be put under oath, and I would explain the process of the interview to everyone. And, basically, I would try to make everyone understand that they're all a part of this interview.

We have a principal applicant for the interview, and that is the person that the—that's the basis of the—of being eligible to apply under the program is based on.

But I also wanted to hear if anybody else had a claim, or if there were any other things that people had to say about what happened to them specifically, whether they agreed with everything, just make sure that everybody was in line with the story that was being given.

Q. Who would you begin with when conducting interviews?

A. I would begin with the principal applicant. Again, that was the person that everything kind of hinged on. Because if the principal applicant did not satisfy the definition of a refugee, then it didn't really matter that the other—if somebody else had been persecuted or had a well-founded fear. If the principal applicant didn't, they weren't really going to go under this program, unless they had their own family relationship.

Q. Did you ever observe disagreements or differences between the testimony of a principal applicant and a derivative applicant while conducting an interview?

A. I did not, actually.

Q. In your experience, the testimony and stories of principal applicants and derivative applicants were always the same?

A. That's—yeah, in my experience.

Q. Turning your attention to the specific interview that you did on April 22nd, 1998. I'd like to draw your attention to Government's Exhibit 24-1.

A. Okay. So I'll look in this book?

Q. It will also come up on the screen in front of you.

A. Okay.

THE COURT: This has already been shown to the jury. Mr. Cahoon, do you agree with that?

MR. CAHOON [Defense counsel]: I do, Your Honor.

THE COURT: And I think this was one you did not have an objection to at that time?

[Defense counsel]: That's correct, Your Honor.

THE COURT: I am going to allow it to be published now, unless you choose otherwise, Mr. Hollingsworth.

[Government counsel]: I would prefer it to be published, Your Honor. Thank you.

THE COURT: It's published.

[Government counsel]: Thank you.

BY [Government counsel]:

Q. What is Government's Exhibit 24?

A. All right. So this is what is called a Form I-590, and it's the Registration for Classification as a Refugee.

Q. And have you seen this particular I-590 before?

A. Yes, I have.

Q. When?

A. Well, in going over—in preparing for the application—or for this—for this hearing, I looked at the applications.

And also, I know that I did this because I have my signature on it, on the second page.

Q. So when was the first time you saw this document?

A. Well, the first time would have been when I did the interview.

Q. And you testified earlier that when you prepared for an interview, you looked to the I-590 as the basis for the claim, correct?

A. That's right. When I prepare it, I would look at the I-590, just to get an understanding of what the claim was about, and just to kind of set up my interview, make sure that if there were any issues that sort of stood out on the I-590, that I made sure that I covered them.

Q. And turning your attention to Questions 4 and 5 on this I-590, what did you learn while you were preparing for your interview?

A. Well, I learned, basically, you know, the country that the applicant was from, and also that they went—it says, "On or about (year/day)." That's kind of out of context actually right now.

Q. So, if I may interrupt. I believe if you read Question 4 across, it provides more context.

A. That's correct. That would be the date that they left—that they left Bosnia.

Q. So in this particular instance, what day did the defendant purport to leave Bosnia?

A. In this instance, it would have been June 25th, 1997.

Q. Okay. And what were the reasons that she gave the United States Government for leaving Bosnia?

A. Well, in this case, it just refers me to an I—another document. It says, "Please see IOM bio."

Q. And was that common, in your experience?

A. It was. Actually, it was the norm. Because, basically, you would have the—the basis—it's talking about the reasons that they left Bosnia.

And so this space that was given was so small, that often they would just—it would be typed up on a separate document so that it, first of all, was legible, and second of all, you could put more information.

Q. And we're going to get to that IOM bio sheet in one second.

But I'd like to turn your attention to Government's Exhibit 24-2, the signature block.

Were you instructed to have every applicant sign their I-590?

A. Yes, I was.

[Government counsel]: And if we could zoom in on the signature block itself.

BY [Government counsel]:

Q. What exactly were they swearing and affirming to?

A. Well, they were swearing that the information in the I-590, including the summary, the case summary, was true and complete information to the best of their knowledge.

Q. And you know that they were swearing to the accuracy of the attachment as well, because in the signature block, it specifically refers to any attachments, correct?

A. That's correct. And even during—when I give my introduction, I would tell them, "Look, if we need to make any changes or corrections, I will make those changes on the application or on the document, the summary as well, and I will number any changes or corrections." And that allows here for any corrections to be numbered. And I would have gone over that.

If there had been any corrections, I would have numbered them and said, "Okay, you agree with these corrections and the information on the corrections," and that would have been signed as well, that they agreed.

Q. So turning your attention to that attached document, Government's Exhibit 26.

When you were preparing for the interview, what did you learn was the basis for the defendant's claim for refugee status?

A. In this particular case, their basis was that they—because they were ethnic Serbs, they had been forced to flee their home—the place that they lived in Bosnia, and that they were not able to go back because they feared, basically, for their life, which was plausible.

And that the wife mentioned that she had gone—well, first they had all gone to Serbia, or Yugoslavia it's actually called. And then the wife and the children had gone back to Bosnia, but a different part that was Serb held; but the husband did not return, because he was afraid that he would be forced to serve in the

Republic Serbian military if he went back to that part of Bosnia.

Q. So drawing your attention to the specific statements contained in the last three paragraphs of Government Exhibit 26, walk us through the chronology of the defendant's movements beginning in August of 1992.

* * *

THE WITNESS: Well, basically, this is where the applicant and her husband are saying that the reason that they left their home

* * *

THE WITNESS: Okay. So this would be their home in Bosnia, which they said that they were threatened and forced to leave because of their ethnicity, because, basically, it was taken over by—well, it doesn't say there, but they said in the interview it was because Muslims forced them out.

And that she then—well, they went together to Serbia, and then she and the children went to Bratunac, in the Serbian part of Bosnia-Herzegovina. She stayed there because there were no living conditions in Serbia for them, but the husband did not. He went—he stayed in Serbia, because he did not want to be mobilized by the Serb Army.

And then in June of '97, so five years later, she would have gone back and joined her husband in Serbia.

BY [Government counsel]:

Q. And then the last sentence of Exhibit 26 encapsulates their fear of returning, correct?

A. Correct. That would be their fear that they would be mistreated on account of their ethnicity if they returned back to their home.

Q. So you prepared—or you reviewed all of this in preparation for interviewing the defendant and her husband, correct?

A. That's absolutely true.

Q. Okay. When did you interview the defendant?

A. This defendant was interviewed in April of 1998.

Q. And where were you when the interview happened?

A. I was in Belgrade, in Yugoslavia.

* * *

Q. What questions did you ask the defendant during that interview?

A. Well, after putting them under oath, I would start with the principal applicant, and, basically, I started out kind of saying, you know, "Well, what was the reason that you left your country," and just kind of see where the questions go.

But, basically, I was asking her why did she leave her country, her home, you know, what was it that happened there, what were her reasons for not wanting to return.

Q. And what did she tell you?

A. She told me—it was consistent with what I just read from this statement. Basically, it was the same testimony, in fact, that she had left because they were threatened by the ethnic Muslims, and that people were shooting at their home, that they were—they were told to leave or else they would be harmed, so

that they did flee in, I think it was August of '92, as a family, they fled, and that they couldn't go back because they feared that they would be harmed, that these threats would be carried out.

Q. Did she tell you that she was separated from her husband for those five years?

A. She did. That was part of her testimony, that they went together to Serbia, but that she and her children went back to the Serb part of Bosnia; so not their home, but a different part of Bosnia. And she was there—I think she had family members in that part of Bosnia, and she was there with her children for five years while her husband was outside of the country in Serbia, because he didn't dare go back. He feared that he would be mobilized into the Serb's military, which actually was committing atrocities itself.

Q. And did you ask her why she didn't want to return to her home country?

A. Yes, I did.

Q. And—

A. That was part of the—

Q. I'm sorry. And what did she tell you?

A. She said her fear was that they would be mistreated and harmed if they went back to their home country.

Q. And why did she fear that they would be mistreated and harmed?

A. Based on her ethnicity. And also, she didn't want—they didn't feel that the husband could go back to the part that she had been living in, because he hadn't served in the military for the Serb Republic part

of Bosnia, and that he would be harmed based on that as well.

Q. At any time during your interview of the defendant, did she tell you that her husband had served in the Army of the Republika Srpska?

A. No. In fact, they stated that he had not served in the Serb's military, because he had been outside of the country that whole time.

* * *

Q. Based upon your training and experience and policies, if someone had informed you that they had participated in the Republika Srpska military, what steps would you have taken in that interview?

* * *

THE WITNESS: All right. Well, I would have gone to what we call a—I call a question/answer format.

So, because this raised the possibility that there might have been—that he may have been a persecutor if he had been in that army, because they were involved in activities that were persecution as well, so I would have started a whole other sort of sub-interview.

I would have been interviewing him within that interview specifically, and I would have asked him questions. I would have written out the questions. I would have written out his answers.

And I would have asked things like, you know, "So when did you serve?" You know, "What was your position, or what was your rank when you served? Where did you serve? What activities were you involved in? Who did you serve under? How long did you serve?"

All those questions to get at, what was he involved in? Was he involved in any of these human rights abuses that have been documented in different country conditions?

BY [Government Counsel]:

Q. And in your review of the file, did you at any point ask any of those questions?

A. I did not.

* * *

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0087

Registration for Classification as Refugee

Type or print the following information. (Read instructions on reverse)

A File No.: 75 042 794

1. Name: (First) DIVNA (Middle) (Last) HAPLENJAK

2. Present address: NJEGOSEVA 27, JAGODINA, FRY

3. Date of birth (month/day/year): [redacted] Place of birth (city or town): ZENICA (Province): (Country): BIH Present nationality: BOSNIAN

4. Country from which I fled or was displaced: BOSNIA On or about (month/day/year): 25/JUN/97

5. Reasons (State in detail): Please see ION Pro

6. My present immigration status in FRY (country in which residing) is: refugee

Evidence of my immigration status is: ref. ID card: 7104802500 (Describe)

GOVERNMENT EXHIBIT 24 1:13CR126

7. Name of spouse:	8. Present address of spouse (if different):	9. Nationality of spouse:
RATKO HAPLENJAK	same as above	BOSNIAN

10. My spouse ☒ will ☐ will not accompany me to the United States

11. Name of child (ren)	Date of birth	Place of birth	Present address (if different)
* DANIJELA HAPLENJAK	[redacted]	ZENICA, BIH	same as above
* BOJAN HAPLENJAK		↓	↓

Place a mark (*) in front of name of each child who will accompany you to the United States

12. Schooling or education

Name and location of school	Type	Dates attended	Title of degree or diploma
THIRD COURSE, ZENICA, BIH	High	1979-1980	Typist
ELEMENTARY SCHOOL, ZENICA, BIH	Elementary	1969-1977	Elementary school degree

13. Military service

Country	Branch and organization	Dates	Serial No.	Rank attained
N/A				

Form I-590 (Rev. 11-13-92)Y

Gov Ex 24-1

NOV 22 '00 -7 22 AM 14 34

6128

14. Political, professional or social organizations of which I am now or have been a member or with which I am now or have been affiliated since my 16th birthday (If you have never been a member of any organization, state "None.")

NONE

15. I ☐ have ☒ have not been charged with a violation of law. (If you have ever been charged with a violation of law, give date, place and nature of each charge and the final result.)

16. I ☐ have ☒ have not been in the United States. (If you have ever been in the United States, show the dates of entry and departure and the purpose of your entry (visitor, permanent resident, student, seaman, etc.).

File or Alien Registration Number:

17. I have the following close relatives in the United States:

Name	Relationship	Present address
[illegible]	sister	247 Lilac Pl. Bourbonton, Ohio 44203
[illegible]	sister	263 Lilac Pl. Bourbonton, Ohio 44203

18. I am being sponsored by (Name and address of United States sponsor):

Date: 30 MAY 98

Signature of registrant: Masleniak Divac

DO NOT WRITE BELOW THIS LINE

I, _____, do swear (affirm) that I know the contents of this registration subscribed by me including the attached documents, that the same are true to the best of my knowledge, and that corrections numbered ( ) to ( ) were made by me or at my request, and that this registration was signed by me with my full, true name:

* Masleniak Divac
(Complete and true signature of registrant)

Subscribed and sworn to before me by the above-named registrant at BELGRADE on 22-OCT-1998
(month/day/year)

(Signature and title of officer)

INTERVIEW NONE

DATE

AT BELGRADE

Immigration Officer

APPROVED

DATE OCT 9 - 1998

Officer in Charge

RE-1

INSTRUCTIONS

This form should be executed, signed and submitted to the Officer in Charge of the nearest overseas office of the United States Immigration and Naturalization Service. When your name has been reached as a registrant you will be furnished additional instructions.

Registration - A seperate Registration Form must be executed by each registrant and submitted in one copy. A Registration Form in behalf of a child under 14 years of age shall be executed by the parent of guardian.

Public reporting burden for this collection of information is estimated to average 35 minutes per response. If you have comments regarding the accuracy of this estimate or suggestions for simplifying this form, you can write to both the U.S. Department of Justice, Immigration and Naturalization Service Policy Directives and Instructions Branch (HQPDI8), Washington, D.C. 20536 and to the Office of Management and Budget, Paperwork Reduction Project. OMB No. 1115-0057, Washington, D.C. 20503.

IOM CASE SUMMARY SHEET

IOM Case Number: 98/B/0613 (4) MASLENJAK, Divna
(DOB: [redacted]62; Sex: F)

Case appears eligible under P4 (family reunification), as PA is a Bosnian Serb and has two sisters in the U.S. (both resettled through IOM Belgrade office, SR - 010923 and SR - 331703). File attached for reference. AOR original from one sister on file. PA's mother and brother also applied for resettlement: IOM Number 98/B/0096.

Relatives of PA (included in case):

NAME	DOB	SEX	RELATION TO PA
MASLENJAK, Ratko	[redacted]59	M	HU
M[redacted] D[redacted]	[redacted]82	F	DA
M[redacted] D[redacted]	[redacted]88	M	SO

CASE NOTES

PA and HU were both born and raised in the village of Svice, near Zenica, BH. Prior to the war, they were living in their family house in the village with their two children. PA and HU were both employed in the local forge, PA as a typist and HU as an electrician. They say in Apr 92, they were laid of at their work place on account of their ethnicity. When the broke out Muslims, the majority of the population, took control of the area where they lived.

PA and HU's home village was predominantly populated by the Serbs. PA says since early 1992, they received phone (death and expulsion) threats on a daily basis. They say in Jun 92, Muslim soldiers searched their house, looking for weapons. The soldiers insulted and provoked PA and family on account of their ethnicity. PA says the soldiers shot around their house a lot so as to scare them away.

PA and HU say a lot of people began leaving the village, so in Aug 92, PA and family left, when a Croat soldier transferred them out and took their car for the favor. The family came straight to FRY and settled with relatives.

Not having any conditions for living in FRY, PA and children went to Bratunac, Serb held part of BH, where PA was given accommodation by a friend and began living with her mother, brother and two sisters (now in U.S.). She occasionally visited HU in FRY, who did not dare go BH so as not to be mobilized by the Serb Army. In Jun 97, PA and children joined HU in FRY.

PA and family are registered refugees in FRY. They see no prospects for local integration on account of their refugee status. They fear maltreatment on account of their ethnicity if they return to their home village.

Gordana Sokic
IOM Case Worker
30 January, 1998

OMB No. 1615-0052

Department of Homeland Security
U.S Citizenship and Immigration Services

N-400 Application for Naturalization

Print clearly or type your answers using CAPITAL letters. Failure to print clearly may delay your application. Use black ink.

Part 1. Your Name. *(The Person Applying for Naturalization)*

Write your USCIS "A"- number here:
A [redacted]794

A. Your current legal name.

Family Name *(Last Name)*: MASLENJAK

Given Name *(First Name)*: DIVNA

Full Middle Name *(If applicable)*: -

B. Your name **exactly** as it appears on your Permanent Resident Card.

Family Name *(Last Name)*: MASLENJAK

Given Name *(First Name)*: DIVNA

Full Middle Name *(If applicable)*: -

C. If you have ever used other names, provide them below.

Family Name *(Last Name)*	Given Name *(First Name)*	Middle Name

D. Name change *(optional)*

Please read the Instructions before you decide whether to change your name.

1. Would you like to legally change your name? ☐ Yes ☒ No
2. If "Yes," print the new name you would like to use. Do not use initials or abbreviations when writing your new name.

Family Name *(Last Name)*:

Given Name *(First Name)*:

Full Middle Name:

For USCIS Use Only

Bar Code | Date Stamp

Remarks

[redacted] LIN-06120960 LIN0609453B1 01/12/2007

Action Block

Part 2. Information About Your Eligibility. *(Check Only One)*

I am at least 18 years old **AND**

A. ☒ I have been a Lawful Permanent Resident of the United States for at least five years.

B. ☐ I have been a Lawful Permanent Resident of the United States for at least three years, **and** I have been married to and living with the same U.S. citizen for the last three years, **and** my spouse has been a U.S. citizen for the last three years.

C. ☐ I am applying on the basis of qualifying military service.

D. ☐ Other *(Please explain)* _____

Part 3. Information About You.

Write your USCIS "A"- number here: A [redacted]794

A. U.S. Social Security Number: [redacted]3722

B. Date of Birth *(mm/dd/yyyy)*: [redacted]1962

C. Date You Became a Permanent Resident *(mm/dd/yyyy)*: 09-28-2000

D. Country of Birth: BOSNIA & HERCEGOVINA-YUGOSLAVIA

E. Country of Nationality: [redacted]

F. Are either of your parents U.S. citizens? *(If yes, see Instructions)* ☐ Yes ☒ No

G. What is your current marital status? ☐ Single, Never Married ☒ Married ☐ Divorced ☐ Widowed

☐ Marriage Annulled or Other *(Explain)* _____

H. Are you requesting a waiver of the English and/or U.S. History and Government requirements based on a disability or impairment and attaching a Form N-648 with your application? ☐ Yes ☒ No

I. Are you requesting an accommodation to the naturalization process because of a disability or impairment? *(See Instructions for some examples of accommodations.)* ☐ Yes ☒ No

If you answered "Yes," check the box below that applies:

☐ I am deaf or hearing impaired and need a sign language interpreter who uses the following language: _____

☐ I use a wheelchair.

☐ I am blind or sight impaired.

☐ I will need another type of accommodation. Please explain: _____

Part 4. Addresses and Telephone Numbers.

A. Home Address - Street Number and Name *(Do not write a P.O. Box in this space)*: [redacted]

Apartment Number:

City	County	State	ZIP Code	Country
AKRON	SUMMIT	OH	44312	US

B. Care of:

Mailing Address - Street Number and Name *(If different from home address)*:

Apartment Number:

City	State	ZIP Code	Country

C. Daytime Phone Number *(If any)*: (330) 733-0005

Evening Phone Number *(If any)*: ( )

E-mail Address *(If any)*:

656a

Part 5. Information for Criminal Records Search.

Write your USCIS "A"- number here: A [redacted]794

NOTE: The categories below are those req[illegible]d by the FBI. See Instructions for more information.

A. Gender
☐ Male ☒ Female

B. Height
5 Feet 4 Inches

C. Weight
170 Pounds

D. Are you Hispanic or Latino?
☐ Yes ☒ No

E. Race *(Select one or more.)*
☒ White ☐ Asian ☐ Black or African American ☐ American Indian or Alaskan Native ☐ Native Hawaiian or Other Pacific Islander

F. Hair color
☐ Black ☒ Brown ☐ Blonde ☐ Gray ☐ White ☐ Red ☐ Sandy ☐ Bald (No Hair)

G. Eye color
☐ Brown ☒ Blue ☐ Green ☐ Hazel ☐ Gray ☐ Black ☐ Pink ☐ Maroon ☐ Other

Part 6. Information About Your Residence and Employment.

A. Where have you lived during the last five years? Begin with where you live now and then list every place you lived for the last five years. If you need more space, use a separate sheet(s) of paper.

Street Number and Name, Apartment Number, City, State, Zip Code and Country	Dates *(mm/dd/yyyy)* From	To
Current Home Address - Same as Part 4.A	12-18-2002	Present
[redacted] BARBERTON, OH 44203 US	09-28-2000	12-18-2002

B. Where have you worked (or, if you were a student, what schools did you attend) during the last five years? Include military service. Begin with your current or latest employer and then list every place you have worked or studied for the last five years. If you need more space, use a separate sheet of paper.

Employer or School Name	Employer or School Address *(Street, City and State)*	Dates *(mm/dd/yyyy)* From	To	Your Occupation
MILICH'S VILLAGE INN	4444 S. CLEVELAND-MASSILLON RD. BARBERTON, OH 44203	10-23-2001	PRESENT	COOK

Part 7. Time Outside the United States.
(Including Trips to Canada, Mexico and the Caribbean Islands)

Write your USCIS "A" number here: A [redacted] 794

A. How many total days did you spend outside of the United States during the past five years? [ ] days

B. How many trips of 24 hours or more have you taken outside of the United States during the past five years? 3 trips

C. List below all the trips of 24 hours or more that you have taken outside of the United States since becoming a Lawful Permanent Resident. Begin with your most recent trip. If you need more space, use a separate sheet(s) of paper.

Date You Left the United States *(mm/dd/yyyy)*	Date You Returned to the United States *(mm/dd/yyyy)*	Did Trip Last Six Months or More?	Countries to Which You Traveled	Total Days Out of the United States
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		

Part 8. Information About Your Marital History.

A. How many times have you been married (including annulled marriages)? 1 If you have never been married, go to Part 9.

B. If you are now married, give the following information about your spouse:

1. Spouse's Family Name *(Last Name)*: MASLENJAK
Given Name *(First Name)*: RATKO
Full Middle Name *(If applicable)*: N/A

2. Date of Birth *(mm/dd/yyyy)*: [redacted]1959
3. Date of Marriage *(mm/dd/yyyy)*: 10-04-1981
4. Spouse's U.S. Social Security #: [redacted]2680

5. Home Address - Street Number and Name: [redacted]
Apartment Number:

City: AKRON
State: OH
Zip Code: 44312

Part 8. Information About Your Marital History. *(Continued)*

Write your USCIS "A"- number here: A [redacted]794

C. Is your spouse a U.S. citizen? ☐ Yes ☒ No

D. If your spouse is a U.S. citizen, give the following information:

1. When did your spouse become a U.S. citizen? ☐ At Birth ☐ Other

If "Other," give the following information:

2. Date your spouse became a U.S. citizen

3. Place your spouse became a U.S. citizen *(Please see Instructions)*

City and State

E. If your spouse is **not** a U.S. citizen, give the following information:

1. Spouse's Country of Citizenship: BOSNIA & HERCEGOVINA

2. Spouse's USCIS "A"- Number *(If applicable)*: A [redacted]795

3. Spouse's Immigration Status: ☒ Lawful Permanent Resident ☐ Other

F. If you were married before, provide the following information about your prior spouse. If you have more than one previous marriage, use a separate sheet(s) of paper to provide the information requested in Questions 1-5 below.

1. Prior Spouse's Family Name *(Last Name)* | Given Name *(First Name)* | Full Middle Name *(If applicable)*

2. Prior Spouse's Immigration Status: ☐ U.S. Citizen ☐ Lawful Permanent Resident ☐ Other

3. Date of Marriage *(mm/dd/yyyy)*

4. Date Marriage Ended *(mm/dd/yyyy)*

5. How Marriage Ended: ☐ Divorce ☐ Spouse Died ☐ Other

G. How many times has your current spouse been married (including annulled marriages)? 1

If your spouse has ever been married before, give the following information about your spouse's prior marriage.
If your spouse has more than one previous marriage, use a separate sheet(s) of paper to provide the information requested in Questions 1 - 5 below.

1. Prior Spouse's Family Name *(Last Name)* | Given Name *(First Name)* | Full Middle Name *(If applicable)*

2. Prior Spouse's Immigration Status: ☐ U.S. Citizen ☐ Lawful Permanent Resident ☐ Other

3. Date of Marriage *(mm/dd/yyyy)*

4. Date Marriage Ended *(mm/dd/yyyy)*

5. How Marriage Ended: ☐ Divorce ☐ Spouse Died ☐ Other

Part 9. Information About Your Children.

Write your USCIS "A"- number here:
A [redacted]794

A. How many sons and daughters have you had? For more information on which sons and daughters you should include and how to complete this section, see the Instructions. **2**

B. Provide the following information about all of your sons and daughters. If you need more space, use a separate sheet(s) of paper.

Full Name of Son or Daughter	Date of Birth (mm/dd/yyyy)	USCIS "A"- number (If child has one)	Country of Birth	Current Address (Street, City, State and Country)
C [redacted] D [redacted]	[redacted]1982	A [redacted]796	BOSNIA & HERCEGOVINA	[redacted] AKRON, OH 44312 US
M [redacted] D [redacted]	[redacted]1988	A [redacted]797	BOSNIA & HERCEGOVINA	[redacted] AKRON, OH 44312 US
		A		
		A		
		A		
		A		
		A		
		A		

Add Children | Go to continuation page

Part 10. Additional Questions.

Please answer Questions 1 through 14. If you answer "Yes" to any of these questions, include a written explanation with this form. Your written explanation should (1) explain why your answer was "Yes" and (2) provide any additional information that helps to explain your answer.

A. General Questions.

1. Have you **ever** claimed to be a U.S. citizen *(in writing or any other way)*? ☐ Yes ☒ No
2. Have you **ever** registered to vote in any Federal, state or local election in the United States? ☐ Yes ☒ No
3. Have you **ever** voted in any Federal, state or local election in the United States? ☐ Yes ☒ No
4. Since becoming a Lawful Permanent Resident, have you **ever** failed to file a required Federal state or local tax return? ☐ Yes ☒ No
5. Do you owe any Federal, state or local taxes that are overdue? ☐ Yes ☒ No
6. Do you have any title of nobility in any foreign country? ☐ Yes ☒ No
7. Have you ever been declared legally incompetent or been confined to a mental institution within the last five years? ☐ Yes ☒ No

Part 10. Additional Questions. (Continued)

Write your USCIS "A"- number here:
A [redacted]794

B. Affiliations.

8. a Have you **ever** been a member of or associated with any organization, association, fund foundation, party, club, society or similar group in the United States or in any other place? ☐ Yes ☒ No

b. If you answered "Yes," list the name of each group below. If you need more space, attach the names of the other group(s) on a separate sheet(s) of paper.

Name of Group	Name of Group
1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

9. Have you **ever** been a member of or in any way associated *(either directly or indirectly)* with:

a. The Communist Party? ☐ Yes ☒ No

b. Any other totalitarian party? ☐ Yes ☒ No

c. A terrorist organization? ☐ Yes ☒ No

10. Have you **ever** advocated *(either directly or indirectly)* the overthrow of any government by force or violence? ☐ Yes ☒ No

11. Have you **ever** persecuted *(either directly or indirectly)* any person because of race, religion, national origin, membership in a particular social group or political opinion? ☐ Yes ☒ No

12. Between March 23, 1933 and May 8, 1945, did you work for or associate in any way *(either directly or indirectly)* with:

a. The Nazi government of Germany? ☐ Yes ☒ No

b. Any government in any area (1) occupied by, (2) allied with, or (3) established with the help of the Nazi government of Germany? ☐ Yes ☒ No

c. Any German, Nazi, or S.S. military unit, paramilitary unit, self-defense unit, vigilante unit, citizen unit, police unit, government agency or office, extermination camp, concentration camp, prisoner of war camp, prison, labor camp or transit camp? ☐ Yes ☒ No

C. Continuous Residence.

Since becoming a Lawful Permanent Resident of the United States:

13. Have you **ever** called yourself a "nonresident" on a Federal, state or local tax return? ☐ Yes ☒ No

14. Have you **ever** failed to file a Federal, state or local tax return because you considered yourself to be a "nonresident"? ☐ Yes ☒ No

Part 10. Additional Questions. (Continued)

Write your USCIS "A"- number here: A [redacted] 794

D. Good Moral Character.

For the purposes of this application, you must answer "Yes" to the following questions, if applicable, even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer or attorney, told you that you no longer have a record.

15. Have you **ever** committed a crime or offense for which you were **not** arrested? ☐ Yes ☒ No
16. Have you **ever** been arrested, cited or detained by any law enforcement officer (including USCIS or former INS and military officers) for any reason? ☐ Yes ☒ No
17. Have you **ever** been charged with committing any crime or offense? ☐ Yes ☒ No
18. Have you **ever** been convicted of a crime or offense? ☐ Yes ☒ No
19. Have you ever been placed in an alternative sentencing or a rehabilitative program (for example: diversion, deferred prosecution, withheld adjudication, deferred adjudication)? ☐ Yes ☒ No
20. Have you **ever** received a suspended sentence, been placed on probation or been paroled? ☐ Yes ☒ No
21. Have you ever been in jail or prison? ☐ Yes ☒ No

If you answered "Yes" to any of Questions 15 through 21, complete the following table. If you need more space, use a separate sheet (s) of paper to give the same information.

Why were you arrested, cited, detained or charged?	Date arrested, cited, detained or charged? *(mm/dd/yyyy)*	Where were you arrested, cited, detained or charged? *(City, State, Country)*	Outcome or disposition of the arrest, citation, detention or charge *(No charges filed, charges dismissed, jail, probation, etc.)*
1) None to this			

Answer Questions 22 through 33. If you answer "Yes" to any of these questions, attach (1) your written explanation why your answer was "Yes" and (2) any additional information or documentation that helps explain your answer.

22. Have you ever:
    a. Been a habitual drunkard? ☐ Yes ☒ No
    b. Been a prostitute, or procured anyone for prostitution? ☐ Yes ☒ No
    c. Sold or smuggled controlled substances, illegal drugs or narcotics? ☐ Yes ☒ No
    d. Been married to more than one person at the same time? ☐ Yes ☒ No
    e. Helped anyone enter or try to enter the United States illegally? ☐ Yes ☒ No
    f. Gambled illegally or received income from illegal gambling? ☐ Yes ☒ No
    g. Failed to support your dependents or to pay alimony? ☐ Yes ☒ No
23. Have you **ever** given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion or removal? ☐ Yes ☒ No
24. Have you **ever** lied to any U.S. government official to gain entry or admission into the United States? ☐ Yes ☒ No

Part 10. Additional Questions. (Continued)

Write your USCIS "A"- number here: A [redacted] 794

E. Removal, Exclusion and Deportation Proceedings.

25. Are removal, exclusion, rescission or deportation proceedings pending against you? ☐ Yes ☒ No

26. Have you ever been removed, excluded or deported from the United States? ☐ Yes ☒ No

27. Have you ever been ordered to be removed, excluded or deported from the United States? ☐ Yes ☒ No

28. Have you ever applied for any kind of relief from removal, exclusion or deportation? ☐ Yes ☒ No

F. Military Service.

29. Have you ever served in the U.S. Armed Forces? ☐ Yes ☒ No

30. Have you ever left the United States to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☒ No

31. Have you ever applied for any kind of exemption from military service in the U.S. Armed Forces? ☐ Yes ☒ No

32. Have you ever deserted from the U.S. Armed Forces? ☐ Yes ☒ No

G. Selective Service Registration.

33. Are you a male who lived in the United States at any time between your 18th and 26th birthdays in any status except as a lawful nonimmigrant? ☐ Yes ☒ No

If you answered "NO," go on to question 34.

If you answered "YES," provide the information below.

If you answered "YES," but you did not register with the Selective Service System and are still under 26 years of age, you must register before you apply for naturalization, so that you can complete the information below:

Date Registered (mm/dd/yyyy) _____ Selective Service Number _____

If you answered "YES," but you did not register with the Selective Service and you are now 26 years old or older, attach a statement explaining why you did not register.

H. Oath Requirements. *(See Part 14 for the Text of the Oath)*

Answer Questions 34 through 39. If you answer "No" to any of these questions, attach (1) your written explanation why the answer was "No" and (2) any additional information or documentation that helps to explain your answer.

34. Do you support the Constitution and form of government of the United States? ☒ Yes ☐ No

35. Do you understand the full Oath of Allegiance to the United States? ☒ Yes ☐ No

36. Are you willing to take the full Oath of Allegiance to the United States? ☒ Yes ☐ No

37. If the law requires it, are you willing to bear arms on behalf of the United States? ☒ Yes ☐ No

38. If the law requires it, are you willing to perform noncombatant services in the U.S. Armed Forces? ☒ Yes ☐ No

39. If the law requires it, are you willing to perform work of national importance under civilian direction? ☒ Yes ☐ No

Part 11. Your Signature.

Write your USCIS "A" - number here:
A [redacted]794

I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, are all true and correct. I authorize the release of any information that the USCIS needs to determine my eligibility for naturalization.

Your Signature: Divna Maslenjak

Date *(mm/dd/yyyy)*: 12-20-2006

Part 12. Signature of Person Who Prepared This Application for You. ***(If Applicable)***

I declare under penalty of perjury that I prepared this application at the request of the above person. The answers provided are based on information of which I have personal knowledge and/or were provided to me by the above named person in response to the *exact questions* contained on this form.

Preparer's Printed Name

Preparer's Signature

Date *(mm/dd/yyyy)*

Preparer's Firm or Organization Name *(If applicable)*

Preparer's Daytime Phone Number

Preparer's Address - Street Number and Name: Div

City

State

Zip Code

NOTE: Do not complete Parts 13 and 14 until a USCIS Officer instructs you to do so.

Part 13. Signature at Interview.

I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, including corrections numbered 1 through [illegible] and the evidence submitted by me numbered pages 1 through [illegible], are true and correct to the best of my knowledge and belief.

Subscribed to and sworn to (affirmed) before me

Officer's Printed Name or Stamp: J.L. [illegible]

Date *(mm/dd/yyyy)*

Complete Signature of Applicant: Divna Maslenjak

Officer's Signature

Part 14. Oath of Allegiance.

If your application is approved, you will be scheduled for a public oath ceremony at which time you will be required to take the following oath of allegiance immediately prior to becoming a naturalized citizen. By signing, you acknowledge your willingness and ability to take this oath:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen;

that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic;

that I will bear true faith and allegiance to the same;

that I will bear arms on behalf of the United States when required by the law;

that I will perform noncombatant service in the Armed Forces of the United States when required by the law;

that I will perform work of national importance under civilian direction when required by the law; and

that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

Printed Name of Applicant: Divna Maslenjak

Complete Signature of Applicant: Divna Maslenjak

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

DIVNA MASLENJAK,
Defendant.

Case No. 1:13-cr-126
Youngstown, Ohio
Wednesday, April 16, 2014
9:06 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

JURY TRIAL

* * *

[Defense counsel]: A couple of comments, if I may, Your Honor.

THE COURT: Sure.

[Defense counsel]: First, the indictment itself talks about, as to Count 1, and if we take a look at the verdict form, it starts with the last word on the second line on the verdict form for Count 1.

THE COURT: I'm there.

[Defense counsel]: That talks about an allegation that "Ms. Maslenjak made material false statements." That was in the indictment. However, both sides wanted to be—present the law as it stands in the Sixth Circuit and otherwise to the court. As the court knows, we did reserve the right in the joint jury instructions and mentioned that in our trial brief, I believe, that both sides addressed it, that the Sixth Circuit does appear not to require materiality to a false statement, but other circuits, at least one that I'm aware of, do seem to require that.

So what I would like to do, in discussing the instructions, is preserve our own objection to the lack of materiality being, at least—if it ends up in the jury instruction, pursuant to Sixth Circuit decision that "material" doesn't come in, I'd like to reserve it just due to the split in the circuit decisions.

THE COURT: You can. And you did discuss that not only—if you did in your trial briefs, I don't remember it, but I did copy that remark into this draft on page 13, the footnote—

[Defense counsel]: Yes.

THE COURT:—that I think you authored, that you "recognize there is a circuit split on the issue of materiality"—

[Defense counsel]: That's correct.

THE COURT:—"and therefore reserves the right ..." So I understand that, of course, when this instruction is ultimately completed, that note comes out, but it was there for the purposes of this conference.

[Defense counsel]: Thank you, Your Honor. And we did want to, again, respectfully bring that matter to

the court's attention and preserve and clarify our position on that.

THE COURT: Yeah, I appreciate that. It's pretty clear to me that the Sixth Circuit has taken a stand, and it is well articulated in *Tongo*, which is *United States versus Tongo*, 16 F.3d 1223, a 1994 case, that there is no materiality requirement for allegations brought by a United States—18, U.S.C., Section 1425. Other circuits have found differently. If the Supreme Court of the United States ever wants to resolve that, it shall and we'll abide by what it says.

But today, I think the fact that *Tongo* says there's no materiality requirement is the appropriate law in this circuit.

[Defense counsel]: I respect that, Your Honor, and that's why we wanted to simply lodge our objection in the instruction that it does not have a materiality requirement to preserve it for possible purposes for a matter, you know, if this ends up on appeal.

THE COURT: I understand that.

[Defense counsel]: Thank you.

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

DIVNA MASLENJAK,
Defendant.

Case No. 1:13-cr-126
Youngstown, Ohio
Thursday, April 17, 2014
8:21 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

JURY TRIAL

* * *

MORNING SESSION

(At 8:21 a.m., prior to the jury entering the courtroom.)

THE COURT: I hope you've had enough time to review the revised draft of the jury instructions, especially that regarding the substantive language regarding Count 1.

* * *

Gentlemen, I am turning to page 12. The changes begin with the third full paragraph that begins "In order to prove," but I still would like you to tell me if there is objection to any part of page 12.

For the government?

[Government counsel]: No objection on behalf of the government.

THE COURT: Mr. Cahoon?

(Pause.)

[Defense counsel]: Thank you for your patience, Your Honor. Oh, you're welcome. I made good use of the time.

Your Honor, I'm essentially not, I guess concerned is the best way to describe it, with what's "Element 2: Contrary to Law" that starts on page 12 and runs over to page 13, Your Honor.

What does concern me, however, is the third full paragraph, "A false statement contained in an immigration or naturalization document does not have to be material in order"—

THE COURT: Let me then just move off of page 12, because I think it's understood there is no objection to page 12. But the subtopic heading at the very bottom, "False Statement Relating to Naturalization," and now I'm on page 13, and, Mr. Cahoon, you may continue.

[Defense counsel]: I am on page 13, Your Honor. I apologize if I said 12.

THE COURT: No, you were correct. I wanted to make the record clear.

[Defense counsel]: Thank you. And I see that there was a footnote about "The Defendant objects to including the subsection on Good Moral Character" as well.

But in the third full paragraph, page 13, it states, "A false statement contained in an immigration or naturalization document does not have to be material," et cetera.

Your Honor, two reasons I'm objecting to that sentence relating to the materiality requirement. Two reasons. Number one, we know, and we have discussed it previously, Your Honor, that there is a split among the circuits, and I fully acknowledge that the Sixth Circuit apparently does not require materiality. However, to preserve the record, I do wish to lodge an objection for the reasons that we have previously stated. We believe materiality is an element, and for that reason, we would object to that sentence being in there.

There is a second reason as well, Your Honor. And that is that the indictment itself had materiality listed in Count 1. And we would respectfully submit that that is the burden or standard that the government put on itself in giving us notice of what we were charged with. And since that's in the indictment, we submit that that's what the government ought to have to prove.

So for those two reasons, Your Honor, we would ask that that sentence about materiality be deleted.

Thank you, Your Honor.

THE COURT: You're welcome.

Mr. Hollingsworth?

[Government counsel]: Thank you, Your Honor.

The United States believes that materiality is not an element, as previously discussed, in reliance on *U.S. v. Tongo*.

As it pertains to the argument about the content of the indictment, the charging language alleges that the defendant, on a certain date, did knowingly procure, contrary to law, her naturalization. And then it further specifies what the United States believes that she did.

The United States believes that we could easily prove that the statement was material, but we don't think that we have to under the law.

THE COURT: I understand that, but I'd like you to go further, because what [defense counsel] said is correct, the indictment—and you agree with this—uses the materiality language, and that's mimicked in the verdict form. And what he's saying is, while he doesn't believe it should exist, but he acknowledges it exists in the Sixth Circuit. So the statement on page 13 represents Sixth Circuit law. I think we all agree on that, although the defendant objects nonetheless.

But the question for you, and you haven't objected, I just would like to resolve it now, the verdict form and the recitation of the charge regarding Count 1 include the modifier "material" before "false statements."

And because it's what was presented to the grand jury, and as [defense counsel] said, it's the burden that the government took on, he believes it should stay in. Your response to that?

[Government counsel]: Your Honor, I spoke with [defense counsel] last night, and the parties agreed

that in the verdict form, the word "material" should come out. There was one other—

THE COURT: I don't think that's what he thinks. The impression I was left with, he said he thought it should stay in.

[Defense counsel]: Your Honor, that is if the court disagreed with us. We understood that the court may take it out.

THE COURT: Yeah, because the law—

[Defense counsel]: We didn't agree to waive that requirement at all, Your Honor.

THE COURT: Right. And that's the reason I have X'd it out, but I wanted to make sure I understood, you have no objection then. The reason I'm asking if you have an objection, of course I want my instruction to represent the law. The law does not require "material." The instruction will be different from your indictment.

So the language in the indictment is set in stone. The law should be correct. So I take it out. I will take it out of the verdict form, and the verdict form will not match the indictment in that way.

[Government counsel]: That's correct, Your Honor.

We have no objection to that.

THE COURT: I think the record is clear.

Mr. Cahoon, your objection to the language in the first sentence of the third paragraph on page 13 that says "does not have to be material," your objection is noted, preserved, but overruled. I am going to leave that in because that is correct law.

* * *

(Jury in at 9:20 a.m.)

THE CLERK: The matter before the court is Case Number 1:13-cr-126, the United States of America versus Divna Maslenjak.

THE COURT: Good morning, everyone. You may retake your seats.

Welcome back, Jurors. Before we proceed further, is there anything that any of you have to report to the court?

Thank you.

Now we've come to the time in the trial wherein I instruct you on the law. It's the custom in federal courts that the judge reads the jury instructions to the jury, and I'll do that in a moment. It might take me almost 30 minutes to read the instructions. It's not very long. Sometimes it takes much longer. I would ask that you listen attentively.

* * *

The defendant has been charged with two crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on the other charge.

Count 1 - Naturalization Fraud.

Count 1 of the indictment charges the defendant with knowingly procuring her naturalization contrary to law. The indictment reads as follows:

"On or about August 3rd, 2007, in the Northern District of Ohio, Eastern Division, Divna Maslenjak, while a citizen of Bosnia-Herzegovina, and an alien, did knowingly procure, contrary to law, her naturalization, that is: Divna Maslenjak made material false statements on a Form N-400 Application for Naturalization by answering 'no' to Question Number 23 which asked whether the applicant had 'knowingly given false or misleading information to any United States government official while applying for any immigration benefit or to prevent deportation, exclusion or removal' or by answering 'no' to Question Number 24 which asked whether the applicant had 'ever lied to any United States government official to gain entry or admission into the United States' and answering the same during her interview for naturalization when Divna Maslenjak then knew well that she had lied to government officials when applying for her refugee status and her lawful pertinent resident status and thereby gained admission into the United States, in violation of Title 18, Section 1425(a), United States Code."

Count 1 of the indictment charges the defendant with violating Section 1425(a) of Title 18 of the United States Code. That section provides in relevant part:

"Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship shall be guilty of a crime."

In order to prove defendant guilty of naturalization fraud, the government must prove each of the following elements beyond a reasonable doubt:

In order to prove defendant guilty of naturalization fraud, the government must prove each of the following elements beyond a reasonable doubt. I've stated that twice.

First, that defendant procured naturalization;

Second, defendant procured her naturalization contrary to law; and

Third, defendant acted knowingly.

Element Number 1: Procured Naturalization.

The government must prove beyond a reasonable doubt that defendant procured naturalization. To establish this element, the government must prove that defendant obtained United States citizenship.

In order to prove—

Element Number 2: Contrary to Law.

In order to prove that defendant acted "contrary to law," the government must prove that defendant acted in violation of at least one law governing naturalization. It is not necessary for the government to prove that defendant acted in violation of all the laws governing naturalization; if defendant violated one law governing naturalization, that is enough to establish that she acted "contrary to law" under 18, U.S.C., Section 1425(a).

False Statement Relating to Naturalization.

One of the laws which governs naturalization prohibits an applicant from knowingly making any false statement under oath, relating to naturalization.

Whether a statement is "false"—whether a statement is "false"—pardon me, I will start again.

A statement is "false" if it was untrue when made.

A false statement contained in an immigration or naturalization document does not have to be material in order for the defendant to have violated the law in this case. Even if you find that a false statement did not influence the decision to approve the defendant's naturalization, the government need only prove that one of defendant's statements was false.

The government must prove beyond a reasonable doubt that defendant knew one or more of the statements alleged in Count 1 of the indictment were false when made.

Good Moral Character.

Another law governing naturalization requires an applicant to demonstrate that "she has been and still is a person of good moral character." This encompasses a five-year period prior to the filing of the Application for Naturalization, as well as the period between the examination and the administration of the oath of allegiance. Giving false testimony for the purpose of obtaining any immigration benefit precludes someone from being regarded as having good moral character. If an applicant does not possess good moral character, the applicant is not entitled to naturalization.

Element Number 3: Knowingly.

To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

Count 2—Use of Unlawfully Obtained Naturalization.

Count 2 of the indictment charges defendant with using an unlawfully issued certificate of naturalization for any purpose. Count 2 reads as follows:

"On or about February 6, 2009, in the Northern District of Ohio, Eastern Division, Divna Maslenjak, did knowingly use an unlawfully issued certificate of naturalization for the purpose of filing a Form I-130 Petition for Alien Relative to assist her husband in securing his lawful permanent resident status based upon their marriage, said certificate of naturalization having been obtained contrary to law by Divna Maslenjak's material false statements made during the application process for naturalization, in violation of Title 18, Section 1423, United States."

Count 2 of the indictment alleges that defendant—pardon me, charges the defendant with violating Section 1423 of Title 18 of the United States Code. That section provides in relevant part:

"Whoever knowingly uses for any purpose ... a certificate of naturalization ... unlawfully issued ... showing any person to be naturalized or admitted to be a citizen, shall be guilty of a crime."

In order to prove the defendant guilty of using an unlawfully obtained naturalization certificate, the government must prove beyond a reasonable doubt:

First, that the defendant's naturalization certificate was unlawfully obtained;

Second, that the defendant used her naturalization certificate;

Third, that defendant knew she was using her naturalization certificate.

1. Procured by Fraud.

The first element the government must prove beyond a reasonable doubt is that defendant procured her naturalization certificate by fraud.

In order to prove this element, the government must prove that defendant procured her naturalization by fraud as alleged in Count 1 of the indictment, on which I have already instructed you.

Defendant Used Her Naturalization Certificate.

The second element is one the government must prove beyond a reasonable doubt is that the defendant used her naturalization certificate by filing a Form I-130 Petition for Alien Relative as alleged in Count 2 of the indictment.

Knowledge.

The third element the government must prove beyond a reasonable doubt is that defendant knowingly used her naturalization certificate in filing the Form I-130.

To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

Next, I want to explain something about proving defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly. Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other

facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that defendant knowingly did or did not do, and whether it is reasonable to conclude that defendant intended those results. This, of course, is all for you to decide.

That concludes the part of my instructions explaining the elements of the crimes charged.

* * *

THE COURT: Counsel, I have developed a three-sentence response. The first sentence is taken verbatim from page 3 of the instructions as I read. It's the sentence at the bottom, under the subtopic heading "Evidence Defined," and the sentence is: "You must make your decision based only on the evidence you saw and heard here in court."

Sentence number two: "You may also rely on your collective memories."

Sentence number three: "You have now what you need to decide the case."

Any objection to that on behalf of the United States?

[Government counsel]: No objection, Your Honor.

THE COURT: Any objection to that on behalf of the defense?

[Defense counsel]: No, Your Honor.

* * *

AT START OF TRIAL JURY WAS TOLD THAT DIANA APPLIED FOR REFUGEE STATUS DUE TO A FEAR OF PERSECUTION DUE TO HER HUSBAND NOT SERVING IN THE MILITARY DURING THE WAR.

ON EXHIBIT # 26 IT STATES THAT DIANA WAS APPLYING FOR REFUGEE STATUS DUE TO FEAR OF PERSECUTION DUE TO HER ETHNICITY.

WHAT WAS HER REFUGEE STATUS GRANTED ON?

FEAR OF NOT SERVING?

OR FEAR OF ETHNIC BACKLASH.

FILED
2014 APR 17 PM
DISTRICT COURT
NORTHERN DISTRICT OF OHIO

FILED
2014 APR 17
PM 6:05
U.S. District
Court Northern
District of Ohio
Youngstown

PEARSON J.

Case No. 1:13cr126

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIVNA MASLENJAK,

Defendant.

JUDGE BENITA Y. PEARSON

VERDICT FORM - COUNT 1

We, the jury, unanimously find Defendant Divna Maslenjak (circle one) **[guilty]** / not guilty of knowingly procuring, contrary to law, her, naturalization, that is: Divna Maslenjak made false statements on a Form N-400 Application for Naturalization by answering "no" to question No. 23 which asked whether the applicant had "knowingly given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportaton, exclusion or removal" or by answering "no" to question No. 24 which asked whether the applicant had "ever lied to any U.S. Government official to gain entry or admission into the United States" and answering the same during her interview for naturalization when Divna Maslenjak then well knew that she had lied to government officials when applying for her refugee status or her lawful permanent residence status and thereby gained

admission into the United States, in violation of Title 18, Section 1425(a), United States Code.

Each of us said jurors concurring in said verdict signs his/her name hereto on this 17th day of April, 2014 (MUST BE UNANIMOUS)

/s/ Juror Signature	*/s/ Juror Signature*
/s/ Juror Signature	*/s/ Juror Signature*
/s/ Juror Signature	*/s/ Juror Signature*
/s/ Juror Signature	*/s/ Juror Signature*
/s/ Juror Signature	*/s/ Juror Signature*
/s/ Juror Signature	*/s/ Juror Signature*

FILED
2014 APR 17
PM 6:06
U.S. District
Court Northern
District of Ohio
Youngstown

[Complete this page only if your verdict on Verdict Form - Count 1 is guilty]

PEARSON J.

Case No. 1:13cr126

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIVNA MASLENJAK,

Defendant.

JUDGE BENITA Y. PEARSON

VERDICT FORM - COUNT 2

We, the jury, unanimously find Defendant Divna Maslenjak (circle one) **[guilty]** / not guilty of knowingly using an unlawfully issued certificate of naturalization for the purpose of filing a Form I-130 Petition for Alien Relative to assist her husband in securing his lawful permanent resident status based upon their marriage, said certificate of naturalization having been obtained contrary to law by Divna Maslenjak's false statements made during the application process for naturalization, in violation of Title 18, Section 1423, United States Code.

Each of us said jurors concurring in said verdict signs his/her name hereto on this 17th day of April 2014. (MUST BE UNANIMOUS)

/s/ Juror Signature

/s/ Juror Signature

/s/ Juror Signature

/s/ Juror Signature

/s/ Juror Signature

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/s/ Juror Signature

/s/ Juror Signature

Case No. 1:13cr126

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIVNA MASLENJAK,

Defendant.

JUDGE BENITA Y. PEARSON

ORDER

[Resolving ECF No. 42]

WHEREAS, Defendant Divna Maslenjak has been convicted of Naturalization Fraud, having been found guilty of that offense pursuant to 18 U.S.C. § 1425 following a jury trial and having been sentenced on August 7, 2014. The conviction for naturalization fraud as charged in Count 1 of the Indictment serves as a predicate for the revocation of Defendant's citizenship pursuant to 8 U.S.C. § 1451, which provides in pertinent part as follows:

> (e) When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

It is therefore ordered that the final order admitting Defendant Divna Maslenjak to citizenship is hereby revoked, set aside, and declared void and her certificate of naturalization is hereby canceled. Defendant Divna Maslenjak shall surrender the certificate of naturalization to the Department of Homeland Security.

IT IS SO ORDERED.

Date: August 14, 2014

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge